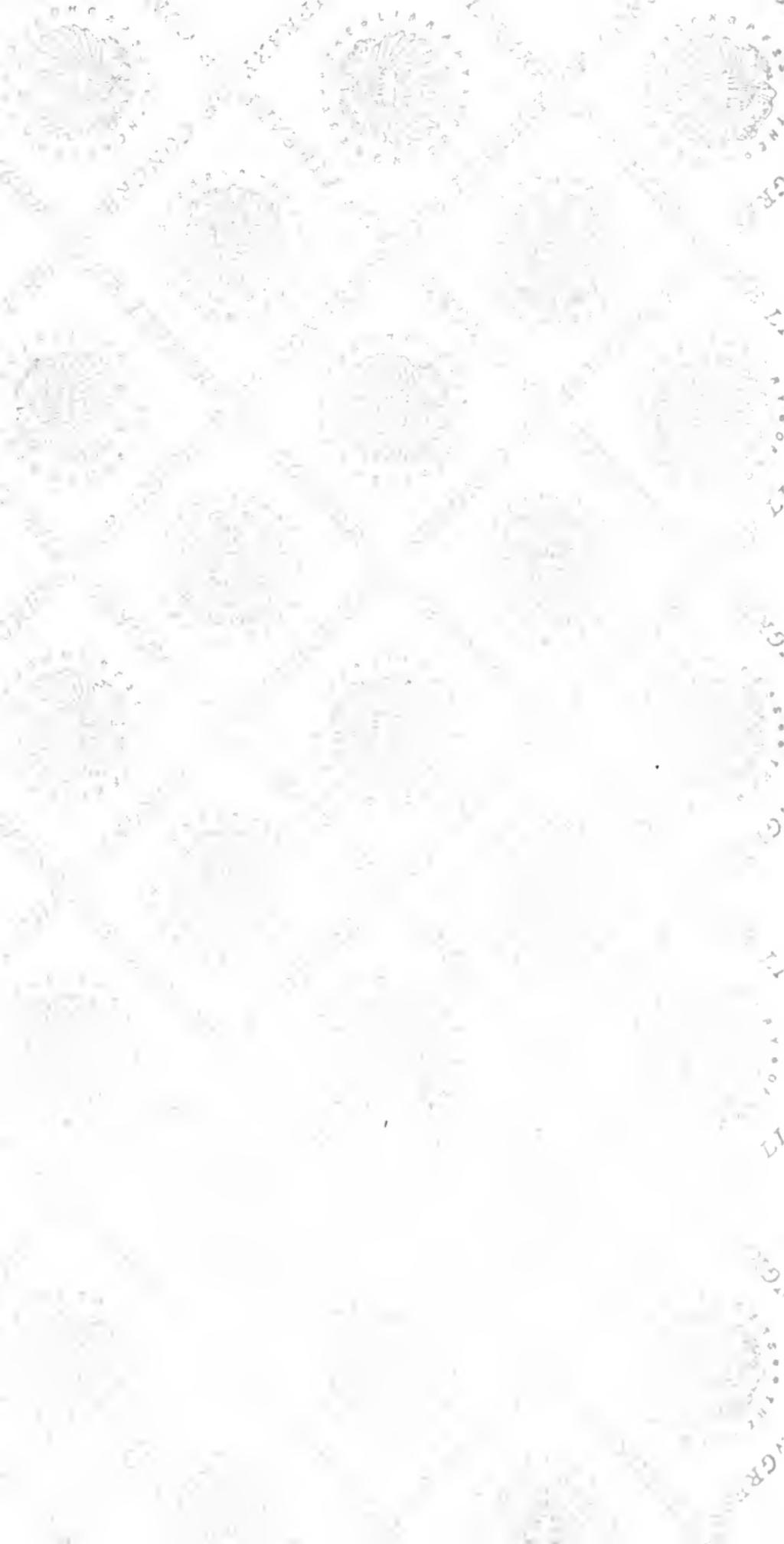


E 373
.B23

LIBRARY OF CONGRESS



0000507891A





SPEECH
OF
MR. J. BARBOUR,

OF VIRGINIA,

ON THE

RESTRICTION OF SLAVERY
IN MISSOURI.

Delivered in the Senate of the United States, Jan. 31, 1820.

Mr. J. BARBOUR, of Virginia, delivered his sentiments, in nearly the following terms :

Mr. President : The Senate will do justice to my sincerity when I declare, that it is with unfeigned reluctance I rise to address them at this stage of the discussion ; that, had I yielded to my feelings, instead of obeying a sense of duty, I should have remained silent. Whatever the human mind could well conceive, has been either spoken or written on this subject ; and no superiority of intellect could add an additional ray of light. So vain a hope, therefore, with my humble pretensions, would be the height of folly.

The question, however, involves such important consequences, whether we view it in its constitutional light, or as it regards the honor of the nation, plighted by treaty, or consider it as to its expediency, as involving the duration of the Union, or in any event its tranquility, it seems to justify, if not to require, any man to disclose the reasons of his vote. But, personal considerations apart, the feeling which this policy, as insulting as it is unjust, has so justly excited in the South and West, in which my constituents so naturally participate, seems to require that their representative on this floor should raise his

voice, however feeble, in solemn protest against its adoption.

In the contemplation of this subject and the sentiments avowed in its discussion, I had expected to have felt nothing but unmixed regret; I had expected to have travelled an unpleasant path, filled only with thorns. To my relief I have found here and there a solitary spot of verdure, on which my eye delighted to dwell. I have seen the most prodigious display of the powers of the human mind; I have seen its empire enlarged far beyond my most sanguine hopes. I do not mean to confine my remarks to one or two, but to extend them to most of those who have engaged in the debate. They have surrounded this body with deserved renown; to which, although I feel a consciousness I cannot add, yet I must be permitted, as a member of the body, to claim some participation. But I have seen more; I have seen a degree of firmness and magnanimity most ennobling to human nature. Senators rising superior to clamor and popular excitement, and filling the measure assigned them by the constitution —at the expence of office, with the sacrifice of popularity, firmly discharging their duty. Such men, compared with the supple politician, who bends like a reed to the blast; who, to promote his own aggrandizement; practises upon the prejudices of mankind, will, by an impartial posterity, when the false fire of the moment shall have subsided, be placed in the zenith, while the latter will be consigned to the nadir, of the moral world. Go on, illustrious Senators! in the career of glory you have commenced! Abide whatever sacrifice the faithful discharge of your duty may produce, with fortitude! and reap your reward, in the consolation of reflecting that you have saved your country from ruin, and in the justice of all trying time. With these exceptions, all that I have heard has filled me with solicitude and pain. I have heard sentiments uttered that go to shake the foundations of the Union, and to produce a revolution in the government; principles avowed directly hostile to the compact on which reposes our Union, and the doctrine avowed, that all power not prohibited belongs to the general government. To combat these, to deprive them of all authority, by showing their fallacy, will be the object of my endeavors. Before, however, I proceed to this, let me notice an attempt which has been made to give a character to this question which it does not deserve. It has been said that this is a question between slavery and freedom. A more indefensible perversion was never attempted to be practised on the human mind. Such a statement of the question is a libel on the South. I appeal, without the fear of contradiction, to every member of the Senate, from every quarter of the Union, when I ask if the South-

ern members have not invariably supported, with unanimity, every proposition which had for its object the suppression of the slave trade ; and whether, during the last session, we did not indulge them in the project, as wild as it was well-designed, of expending thousands for the accommodation of the unfortunate victims of that abominable trade, by authorizing the government to provide them an asylum in Africa, to be maintained at the public expence. Can, then, any man believe we wish to multiply the number ? The question we are called to discuss, is not whether slaves shall be multiplied. If it was, there would be but one sentiment here. What is the real question ? Shall we violate the constitution, by imposing restrictions on the people of Missouri ? While exercising the great privilege of forming their government, shall we disregard the solemn obligations imposed by treaty ? And shall we finally do an unmeasurable act of injustice, in excluding the people of one half the republic from participating in that country bought by a common treasure and their exclusive counsels ? And for what ? Not to diminish slavery, but to confine it within its present limits—destructive to the slaves themselves, and fatal eventually to the whole population—instead of diffusing them over a wide-spread country, where their comforts would be increased, and by their disproportionate numbers they might be within the reach of the suggestions of policy and of humanity. Not to diminish slavery, I repeat again ; but to seduce the white population from this portion of country thus interdicted, and to increase the disproportion of the blacks to such an extent as forever to shut the door of hope upon them ; or to drive us from the country, and surrender it exclusively to them.

This is the real state of the question, which I will now proceed to discuss ; and, for the sake of perspicuity, I propose to do so under the following heads : 1st. You have no constitutional right to impose the restriction involved in the amendment. 2d. That the treaty by which we acquired the country forbids it. And, 3d. That it is inexpedient and unjust to do so.

1st. Your constitutional right. It may not be unimportant, in discussing this branch of the subject, to ascend to the origin of the government. To ascertain its humility, its progress in acquiring power, and its now alarming pretensions. A discussion of this character will not be entirely without its use in reference to the general course of our legislation. Some gentlemen may thereby acquire the information they seem to lack, that all power not prohibited is not granted necessarily to the government, as has been contended for by at least one of the speakers who have gone before me. The present constitution is nothing more than an expansion of the confederation,

Its object is the same; the means of attaining that object have only been enlarged. And what was that? To operate on our external concerns, and to regulate such subjects internally as could not, from their character and extent, be properly administered by any of the states; and there only to the extent specifically enumerated in the constitution. It will be recollected, that this mass of power, awarded to the confederation, was surrendered by sovereign states, whose jealousy of the general government was such, that, as experience evinced in the practical results, they were entirely incompetent to the object. It is worthy of remark, how cautiously they guarded against the abuse of this very limited authority, by the 2d article of that instrument, which is to the effect following:

“Art. 2. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.”

I invite the attention of the Senate particularly to the phraseology of this article, as disclosing the real design of the contracting parties as to the extent of the power of the individual states, and of the general government. And, sustaining the position I have before taken as to the objects whose administration was intended to be confided to the general government, I have been thus full on this branch of the subject, because, although a similar clause was not introduced in the constitution of the United States, yet it was distinctly understood the same principle attached to the constitution, as well from the specific enumeration of the powers, as the cotemporary expositions by the most approved writers; but, above all, by the 10th amendment of the constitution, to the effect following: “The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” And it may be stated, that, if there was any one point on which the people of America universally agreed, it was that necessity of restraining the general government within the prescribed limits, to guard against encroachments on the authority of the states, and thereby prevent a consolidation which has been universally considered as a synonyme with monarchy.

These are truths generally admitted, and always have been, in the abstract; but, in their application, we are mortified to perceive an endless variety of opinions, some contending for a latitude so wide in their interpretation of the powers of the government as to defy limitation; while others insist, and justly insist, that they view the powers of the federal government, as resulting from the compact to which the states are parties, as limited by the

plain sense and intention of the instrument constituting that compact. This is the language of the celebrated resolutions of the Virginia Assembly. Not merely because they were adopted by that body, but because it was a part of the republican creed, to which a vast majority of the American people gave their hearty approbation, and by which the line was completely drawn between the different political parties of that day. It is a sound principle, which I wish to see revived, (for it seems to have been forgotten,) and resorted to in all doubtful cases, as an infallible standard. And here, I protest against a species of special pleading which, rejecting the principle just alluded to, hunts for powers in words or sentences, taken here and there from the instrument and patched together, forming something like a pretext for the exercise of powers palpably interdicted by the plain sense and intention of the instrument. These preliminaries being disposed of, we are brought to the conclusion that those who contend for the power in question must show it. This has been attempted, and no two agree as to the portion of the constitution from which they derive the power. This circumstance of itself is entitled to great consideration. If the subject had been of a character whose administration could not be effected by the states, in their individual character, one might be disposed to give a latitude of construction to the clause of the constitution, if any existed, that related to this subject; but, when it is known that the subject of slavery had been exclusively under the control of the states, to the entire exclusion of the general government, except in a case of a peculiar character, (the slave trade,) before we assume upon ourselves the exercise of such an authority, we should be satisfied that the power has been plainly given. In lieu of which, one gentleman pretends to find it in a clause whose only object was a restraint upon Congress; while another acknowledges that he considers this clause as giving no such authority, and refers us to another; while other gentlemen select new clauses imparting this authority.

Let us examine them respectively. 1st, let us consider the 1st clause of the 9th section, 1st article. Gentlemen contend that the word 'migration,' is the magical word in which is contained the power about to be exercised. The plain answer to this is, that it produces a confusion of ideas, to assert that a clause, whose palpable design was to restrain Congress from exercising an authority, imparts a substantive grant of power; but, it is reasoned, why restrain Congress, till the year 1808, from exercising an authority which they did not possess? Do gentlemen mean to say that all power interdicted by the 9th section would belong to Congress, had not such re-

striction been inserted? The gentleman from New-Hampshire contends for this monstrous doctrine, and asks, had it not been for the clause interdicting titles of nobility, would not Congress have had the power to have created a nobility? The gentleman seems not to understand the first principles of the government—for, if his doctrine be acted upon, it is equal to a revolution, and a government of limited powers would instantly be converted into one of absolute authority. I should have paid less attention to this doctrine by supposing that the gentleman had not reflected upon it, had he not uttered the same thing during the last session. It seems, therefore, that this is one of his fixed principles. A more heretical or a more dangerous one, cannot well be conceived. But, sir, were I for a moment to yield a point so palpable as this, still, I might contend that the gentlemen would be without the power contended for. What is the argument on their part? That 'migration' and 'importation' equally relate to slaves—That 'importation' relates to foreign slaves, while 'migration' refers to domestic slaves passing from one state to another, and that Congress, therefore, has a right to prevent their passage to the Missouri. Now, I contend that 'migration' was intended to refer to free foreigners, coming to this country, while 'importation' was intended to apply to slaves from abroad. This conclusion is warranted, as well by the phraseology of the section, as by the circumstances of the country. What is its language? That the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808: but a tax or duty may be imposed on such importation not exceeding ten dollars for each person. If this interpretation be received, the meaning of the clause is intelligible and rational. By dropping 'migration' when speaking of a tax or duty, it may be fairly inferred that the migration spoken of was, that of free men, to tax whom would be absurd. But the circumstances of the country at that time are entitled to great weight in forming our opinion. A large portion of the middle, southern, and western states, were sparsely inhabited. It was among the grievances enumerated, as leading to the revolution, that the crown of Great Britain had indicated a hostility to the migration of foreigners. Hence, lest the more populous portions of the United States should indulge in a similar abuse of power, Congress was expressly interdicted from taking any step in relation thereto, prior to the year 1808.

That this was the true import of this clause, is not only sustained by the considerations to which I have just referred, but is supported by an exposition given us at a period near the adoption of the constitution. Those who

opposed the alien law in Congress insisted upon this interpretation, and none with more force than my predecessor, Judge Tazewell, one of the most distinguished men of whom Virginia can boast. In his speech, which I have now before me, on the alien law, he holds the language I now do, and contended that Congress was virtually violating this clause. The Senate will recollect this discussion was in 1798; and it is worthy of remark, that the application of this word to slaves was first made by the friends of the alien law, to elude the force of this argument. The committee of the House of Representatives, in an elaborate report, drawn with a view to defend this law, assert that 'migration' related to slaves; but even the authors of that report contend only that it relates to the importation of slaves from abroad. But, we are told, Congress has fixed the meaning of this clause by the law of 1804, interdicting the bringing of slaves into Louisiana from any place in the United States, except by removal with their owners. But nothing is to be gained by this precedent. 1st. Louisiana was a territory, and not a state. 2d. It was the result of an excitement produced by peculiar causes, which have been amply detailed by the gentleman from South Carolina, and passed probably without discussion. 3d. It was repealed at the next session, by the law relative to the territory of Mississippi, in which Louisiana was placed on the same footing with that territory. So that, if it weigh any thing, it is against the interpretation contended for, as Congress retraced its steps within one year after the passage of the law of 1804. But the admission for argument sake was a mere gratuity, that a negative clause might be interpreted into a grant of power. I contend, this clause gives no power. How should it be understood, according to the plain intent of the constitution? To Congress had been given the power to regulate foreign commerce, and to establish an uniform rule of naturalization. But, lest this power should be exercised against the wishes of a particular portion of the Union, for the reasons stated above, this clause was introduced. I do not mean to be understood as saying any thing about the right of Congress to interfere in the case of the migration of foreigners; whether they have or not is not now involved; and its restriction till 1808 by no means implies necessarily such a power. For it is palpable that this section was drawn, out of abundant caution, &, as is evinced by the 4th clause of that section, Congress is interdicted from exercising an authority in any other way than had been previously prescribed. Its language is—no capitation or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken. Hence, it follows that, as I said be-

fore, a restraint on Congress does not imply the existence of the power restrained; for I presume the gentleman from New Hampshire would hardly contend that Congress, even without this clause, would have had the power to vary the standard of the apportionment of direct taxation. But, it is said, that, as Congress has the power to prevent the importation of slaves under the clause of regulating foreign commerce, they have the power to prevent the passage of slaves from one state to another under the clause of regulating the commerce between the states. Now, sir, what is commerce, according to the common understanding of mankind, or in its strictest sense, as furnished by the most approved lexicographers? It is traffic. And can any one soberly contend that a removal of the head of a family, like the patriarch of times gone by, carrying with him his household, is engaged in that kind of commerce whose regulation has been given to Congress. His slaves are a part of his family; they have descended from generation to generation; are the depository of the history of his family; have rocked the cradle of his infancy, or have been companions of his youth; for them he has an affectionate regard; to preserve whom, if adversity come upon him, he will sell his home, and seek a more propitious fortune in the wilderness. Will any man call such a removal carrying on commerce? But, again, what was the end in view in giving this power to Congress? To ascertain this, let us recur to the state of this country prior to the adoption of the constitution. The states, having absolute authority over this subject, had adopted various and vexatious regulations upon the commerce between each other: they were as foreigners, each availing itself of its peculiar situation, at the expense of the other states. Those lying on the Atlantic made the interior tributary to them; and, as in all unwisely-organized confederacies, this policy was generating heart-burnings, so unfavorable to union. To prevent this, to the parent government was given the power of regulating this commerce—the whole amount and object of which was, to guarantee an unrestrained intercourse between the states; not to shackle or embarrass it; still less to apply it to the ordinary intercourse between coterminous states in the endless transactions occurring between their citizens. To relieve myself from a further comment on this part of the discussion, permit me to refer the Senate to the 11th No. of the Federalist. I will subjoin one other remark: if Congress were justifiable in attempting to legislate on this subject—I mean the commerce between the states—it can be done only by a general law; for the 5th clause of the 9th section of the 1st article expressly inhibits Congress from a partial legislation; and, by a re-

urrence to this clause, which should be united with that giving the power to Congress to regulate the commerce between the states, it will be seen to what object this power was intended to relate: by it, the plain intent of the parties is so manifestly proclaimed, that I cannot see how it can be misunderstood by one honestly enquiring after its just meaning.

But, it is contended by some, that this power is to be found in the 3d section of the 2d clause of the 4th article. The answer to this is, that this clause relates to territories, and not to states. As there is a bill depending before us directly involving your power to legislate on the territories, it is unnecessary to discuss this question now. It is sufficient to say that it is doubtful whether you have the power, even in reference to territories; but it is palpable you can have none, under this clause, as it regards states.

We now come to consider the last clause in the constitution in which it is contended that this power has been granted, viz. the 1st clause of the 3d section of the 4th article. This is the only clause which, in my estimation, has any thing to do with the subject. New states may be admitted, &c. This is a mere extension of the 11th article of the confederation, which was limited to the admission of Canada, and other colonies; meaning, no doubt, other British colonies. To Canada the most perfect equality was guaranteed, by this clause, with the original members of the confederacy. The words "new states" must have been intended to convey a specific idea. The words are used by persons who distinctly understood their import; for they were the direct representatives of states whose attributes of sovereignty had been secured, in the 2d article of the confederation, by an express declaration, that all power was retained which had not been expressly given to the general government. And, in addition, the practice of twelve years had left no doubt as to the power which had been retained and exercised by the states. When, then, they gave to Congress the power of admitting new states into this Union, it must be understood that, with the exception of the power then transferred to the general government, or expressly withheld by the constitution, all other power belonged to the states, and, the moment that a new state is admitted into the Union, it is placed upon the most perfect equality with the other states, as well to its rights as its obligations. But it is, that "new states may be admitted into this Union." My friend from Maryland has, in a masterly argument, shewn that it is this Union into which they are to be admitted, and no other; which would not ensue if to one state rights were given which were withheld from another: for the terms of the

Union, in that case, being different, the Union could not be the same ; and, therefore, they would not be admitted into this Union. It would be worse than useless for me to add any thing to what he has said. What, then, is your power ? Simply whether you will admit or refuse. This is the limit of your power. And even this power is subject to control. Whenever a territory is sufficiently large, and its population sufficiently numerous, your discretion ceases, and the obligation becomes imperious, that you forthwith admit. For I hold that, according to the spirit of the constitution, the people thus circumstanced are entitled to the privilege of self-government.

Have we not a right to contend, that, if the Convention had intended to give to Congress the power of admitting on conditions, it would have said so ? The constitution has not authorized the exercise of such a power directly, and there is nothing to justify the exercise of such a power by implication, if implication were allowable.

If, then, it be true, that your discretion, even as to admission, is limited, as I have endeavored to show, and in the present case all the constituent qualifications exist on the part of the people of Missouri for self-government, you are bound to say that she shall be admitted as a state into this Union. If she be admitted as a state, all the attributes of the old states instantly devolve on her, and the most prominent of those attributes is the right to fashion her government according to the will and pleasure of the good people of that state : whereas your restriction deprives her of that privilege forever ; and your restriction applies to a species of property that most peculiarly belongs to the jurisdiction of the state government. For, can it be believed, that the states holding slaves could ever have intended to impart to non-slave-holding states an authority over a property in which they had no common interest ; a property, in relation to which, so far from the necessity of surrendering the power to control it to the general government, self-preservation required that it should be left exclusively to the state-governments.

To all this it is replied, that the uniform course of the government, since the ordinance of '87, amounts to a precedent not now to be canvassed.

In cases of doubt it is readily admitted that decisions, after mature deliberation, upon full discussion of distinguished men, are entitled to great weight in analogous cases. Now, sir, how far will the proceedings of Congress under the ordinance operate as a precedent ? The ordinance itself was founded in usurpation. No such power had been granted Congress by the confederation. Lest I should be charged with an assumption myself, I will call to my aid the work so frequently referred to—the Federalist. In page 235, this is expressly admitted. I

is there stated that it was an assumption on the part of Congress. I have seen it stated, indeed, in a pamphlet or speech, (for I know not what to call it,) that Congress had the power, as incident to their character. Mark the facility with which every usurpation of power is justified! What is not expressly given, may be implied; or, if there be nothing to justify implication, it may be incidental; and, if it be neither the one nor the other, the next step is, that it ought to have been given; and thus, by some means, every power which it is desirable to exercise, will be, or may be, claimed. But, rejecting these claims as entirely untenable, I assert, the ordinance itself was an assumption of power. It is admitted that it has been acquiesced in, and all its provisions have been carried into effect. It is not now to be disturbed. But it still is nothing as a precedent; because it attached to a wilderness, and not to men. Those who subsequently settled this country adopted it from choice. Their sentiments and habits were fashioned by the principles of the ordinance, and, when admitted into the Union, instead of the right of Congress to impose a restriction on them being denied, and discussed and seriously decided, I am warranted in saying that the question was never stirred. Why enquire into a condition that was perfectly useless, the people themselves not wishing to hold slaves? But this I assert, that the people of the states embraced by this ordinance, when in Convention, considered themselves unrestrained, and considered the question with an exclusive eye to its expediency.

The course therefore pursued by the government, under this ordinance, is not entitled to the least weight as a precedent; but, if it were, I beg leave to present various precedents of a directly different character. The states of Kentucky, Tennessee, Louisiana, Mississippi, and Alabama, have all been admitted without restriction. To what then does the history of our proceedings amount? That, in every instance, other than those connected with the ordinance, Congress has admitted without restriction. Congress has never before dared to apply it to a portion of country where slaves were; in effect, where it was to amount to a restriction. It is, however, urged, that conditions were imposed on Louisiana. The principal part of these were merely in conformity to the great principles of freedom; were incorporated in the law in reference to the peculiar people whom we were about to introduce into the Union—people who had before lived under a different form of government, and who were supposed not sufficiently versed in the principles of our government; and were justifiable only, if at all, under the power of Congress to guarantee to each member of the confederacy a republican form of government. I doubt,

however, the power of Congress to impose them at all but sure I am, that they had no power to restrict them as to the language which they should employ in promulgating their laws. The best criterion to test the right of Congress to impose this restriction, is to enquire by what means will they enforce obedience, were Louisiana to refuse a compliance. For, to every legitimate power you have the corresponding one of enforcement. Where the latter is wanting, the former does not exist. This I think may be assumed as an axiom in our government. The exercise therefore of this power was without right, and serves no other purpose than to show the facility with which all governments advance in the acquisition of power. They well may be likened to a screw: they never retrograde; every acquisition becomes a temptation to new aggressions, and not unfrequently the means by which they are realized. There is one idea so repeatedly urged, that those who entertain it must have credit for their sincerity, and that is, that we have greater power with the states to be formed out of acquired territory than in that originally a part of the United States.

By what course of argument this conclusion is arrived at, I am at a loss to discover. There is but one distinction acknowledged in the constitution between the then existing states & those thereafter to be admitted, and that is confined to the importation of slaves. This shows that in all other respects they were to be on an equal footing with the old states; for, had such not been the design of the convention, as they discriminated in the one case, they would have done so in every particular where it was intended. In addition, it may be remarked, that, in the 3d clause of the 2d section of the 1st article, the same principle of representation, as it regards slaves, was to be extended to such states as may be admitted; pointing directly to the clause, of course, that new states might be admitted into the Union.

The gentleman from Massachusetts, (Mr. Mellen) says that we impose no condition; but that the people of Missouri, if they accept it, impose it on themselves. And he illustrates his idea by a comparison of this case with that of the Bank of the United States. I regret to find that gentleman placing the great privilege of a people to govern themselves, upon so humble a footing as an equality with a bank corporation. Where is the resemblance? Congress has the right to refuse to incorporate a bank; if, however, it dispenses this privilege, it may impose what terms it pleases. If they be acceptable or otherwise, none can complain. But Congress is bound by the constitution, in this case, to admit Missouri into the Union; if it refuse, it will do an immeasurable injury to the people of Missouri, because it deprives them of the

great privilege of self government. If you impose conditions as a *sine qua non* to her admission, however severe these conditions may be, she may, possibly, to obtain possession of the inestimable blessing of self government, accede to them; but her consent is obtained by a species of force. Justice claims of power its rights—power grants a part only, and requires, before that part be given, a relinquishment of the remainder. Is this no condition, although justice, despairing of the whole, should acquiesce in the terms presented by power? It is unnecessary to add any thing to a proposition so palpable. The gentleman from Pennsylvania says this is no restriction, but a blessing. Let the people of Missouri decide for themselves. We do not ask that Missouri shall admit slavery. All that we require is, that she may decide for herself. If it be, as gentlemen assert, a blessing, what have you to fear from the good sense of the people of Missouri? You have pronounced them capable of self government in all the important concerns of life, except in this particular. Why not trust to her discretion in this? Send out your go-carts of pamphlets, the substances of speeches made in the Senate; pronounce before them your long Jeremiads against slavery, long as a Scotch coronation prayer, and can you doubt the success of your endeavors to prevent the introduction of slavery among them? Why leap the boundaries of the constitution to force upon them that which you say is a blessing?

But, the gentleman from Pennsylvania asks, shall we suffer Missouri to come into the Union with this savage mark on her countenance? I appeal to that gentleman, to know whether this be language to address to an American Senate, composed equally of members from states precisely in the condition that Missouri would be in, were she to tolerate slavery. Are these sentiments calculated to cherish that harmony and affection so essential to any beneficial results from our Union? But, sir, I will not imitate this course, and I will strive to repress the feeling which such remarks are calculated to awaken. Permit me here to notice an observation made by the gentleman from Massachusetts, (Mr. Otis,) who, in this instance, departed from his usual urbanity. Were he to visit Europe, he fears that, on his landing, his country being known, he might be upbraided by some Spaniard, for example, who might tell him he was from the land of hypocrites—with freedom on their lips, and the bloody scourge brandishing in their hands. Would the gentleman be without an answer? Might he not say, how dare you thus defame, you slave? Do you not bow the knee before the bloody sceptre of cruelty and superstition? Is not the emblem of your power the wheel of the inqui-

sition? Are you not the first people to have commenced the barbarous traffic in slaves? Are you not the last to surrender it? Have you not received a price to abandon it, and do you not at this time add perfidy to cruelty, by pursuing it to the utmost extent of which you are capable? Should the gentleman extend his tour to England, and there meet with the same accusation—feeling as he ought, and speaking as he felt, would he not indignantly denounce the insolence of the slanderer, by telling him, to take the beam from his own eye before he attempted to remove the mote from his neighbor's? Might he not ask, to whom are we indebted for slavery at all; is it not to England? Have you not been engaged for centuries in this horrible traffic, and against the remonstrance of the people whom you now abuse? Did not Virginia, of all the civilized world, first lift up her voice against this trade? But she lifted it in vain. Gain was your object; you weighed that against the peace and happiness of both hemispheres, and accepted it as an equivalent. Nor was it yielding to a momentary impulse of cupidity, or ignorance of its moral consequences. But you pursued it for centuries: and, although you were warned, by the glowing eloquence of your Wilberforce and your Clarkson, who thundered in your ears the sighs and lamentations of the suffering victims of your wickedness; and spoke, like angels trumpet-tongued, the deep damnation of your crimes, you turned a deaf ear, deaf as an adder, and found your indemnity for all this in dollars and cents. Tis but yesterday you ceased; and to-day you assume the moral chair, and pronounce homilies against the unavoidable effects of your crimes. For, what have the American people not done? Have they not, whenever any regard to their own peace would permit, emancipated the slave? And where that was impracticable, have not the masters, by their kindness and affection, deprived slavery itself of its horrors? Cease, then, your defamation. Turn your eye to every region of the earth, where you bear sway, and, when you shall have relieved the wretched and oppressed, then, and not till then, presume to preach reformation to others. With such materials as these, delineated by his masterly hand, the blush he dreaded on his own account might be transferred to his accuser.

But both the gentlemen from Pennsylvania and New Hampshire have called to their aid the Declaration of Independence, and the sacred principles it consecrates. What has that to do with this question? Who were the parties—the slaves? No. Did slavery not exist in every state of the Union at the moment of its promulgation? Did it enter into any human mind that it had the

least reference to this species of population? Is there not at the present moment slaves in the very states from which we hear these novel doctrines?

How has it happened, that these doctrines have slept till this moment? Where were they at the adoption of the constitution, in which slavery is recognized, & the property guaranteed by an express clause? And shall we, the mere creatures of that instrument, presume to question its authority? To every other sanction imposed by our situation, is the solemn oath that we will support it. Where are the consciences of gentlemen who hold this language? But, they assure us, that they do not mean to touch this property in the old states. What, this eternal, and, as they say, immutable principle, consecrated by this famous instrument, and in support of which we have appealed to God, is to have no obligatory force on the very parties who made it; but attaches instantly you cross the Mississippi! What kind of ethics is this, that is bounded by latitude and longitude—which is inoperative on the left, but is omnipotent on the right bank of a river? Such doctrines are well calculated to excite our solicitude; for, although the gentlemen, who now hold it, are sincere in their declarations, and mean to content themselves with a triumph in this controversy, what security have we, that others will not apply it to the south generally? This, sir, is no longer matter of speculation; you have heard the doctrine contended for already, not at crossroads, or in the city taverns, but in the legislative hall of a state. When it shall be resorted to by faction, who can pretend to prescribe its limits! Every page of history is full of melancholy proofs of the feebleness of that security, which reposes upon the moderation of the ambitious and designing. The means are always made to yield to the end. I, therefore, heard the doctrine with unmixed regret. I fear it is the beginning of new counsels, whose disastrous effects no one can foresee.

Sir, there is one view of this subject, which I wish to present to the Senate; if you have the pretended power, why not exercise it in the ordinary and only legitimate mode, by making it the subject of legislative enactment? Why seek, by compact with Missouri, to bolster your authority? If you have the power, is her consent necessary? If you have it not, can that consent give it you? What should we think of any man, when the bankrupt law was under consideration, if he were to propose, before he acted, to obtain the consent of one or more of the states? And yet it would be as rational as in the present case, supposing you have the authority, to require the consent of Missouri to give it effect.

But the principal feature in a legislative act is, that it

s in the power of our successors to change it ; here, on the contrary, you seek to make the regulation immortal. The constitution itself contains a principle of alteration, so as to adapt itself to the progress of human affairs, and yet you place a legislative act beyond all human power of change or modification. I will forbear any further remarks on this branch of the subject, and proceed in the order I proposed. I will now enquire, whether, by treaty, we are not restrained from restricting Missouri ? By the third clause of the treaty, by which we acquired this country, the inhabitants are to be incorporated, &c.

I consider it not of moment to enquire, whether their admission, according to the principles of the federal constitution, relates to the time or the terms of such admission, because they are, when admitted, to enjoy all the rights, privileges, and immunities, of American citizens. An attempt has been made to discriminate between federal and state rights, in a celebrated tract denominated, "the substance of two speeches," &c. For my part, I have been utterly unable to comprehend the meaning of the author. Does he mean to assert that there may be one or more citizens entitled to federal privileges, and not to state privileges ? On the converse, to me it has always appeared as not admitting of a question, that these were indissolubly united in an American citizen. A citizen of the United States must be a citizen of some one of the states, and, as such, entitled to every right or privilege secured by the federal or state government. If there be any right pertaining to citizens of the United States, it is that of fashioning their government according to their own will and pleasure. This right was, therefore, secured by compact to the inhabitants of the territory in question, and any attempt to impair or abridge it, is in violation of that treaty. In the same tract it is said, slaves are not property ; the gentleman from Massachusetts, (Mr. Otis) frankly admits, that this is an unwarrantable assertion, and such must be the award of all mankind. Did not both the contracting parties recognize slaves as property ? Were they not known to abound in the territory ceded, and constituting the largest proportion of the property of the people ? Is it consistent with reason to suppose that, when such care was taken to secure the people of the territory in the undisturbed enjoyment of their property, the principal part was intended to be excluded ? It is mortifying to have to contend with such a shadow. The whole territory ceded was to be admitted into the union. The letter of the treaty required, that it should have been admitted as a whole. You thought proper to divide it ; but you suffered the Louisiana part to come in without res-

triction, in this regard. Upon what principle can you reconcile with good faith the distinction you now set up between Missouri and Louisiana?

The gentleman from Massachusetts, (Mr. Otis,) advances the proposition, that, were this a conquered country, Congress might impose what terms they pleased—one, instead of two Senators; and, in short, whatever modification it pleased. As this is a question which for the present may be said, in law language, to be *coram non judice*, and as we have our hands full without it, I shall not discuss it. I shall dismiss it by denying its truth, and declaring that it is essential, in all cases, no matter by what method the territory may be acquired, whenever it becomes incorporated into the Union, it must be, in the language of all our precedents, on an equal footing with the original states, in all respects whatsoever. It is asked, who are the parties to the treaty, and who is there to punish its infraction? Why propound this question? The honor of the American people is the guaranty of its faithful execution. Our own brethren have become interested in its execution; for they have mingled with the original inhabitants: they are entitled to the most liberal interpretation of the treaty, as well on the score of national law as the principles of justice and a liberal and enlightened policy. The gentleman from Massachusetts, in illustrating his views of the powers of Congress on this subject, has enquired, whether Congress could not exclude a religious sect from inhabiting the intended state, the principles of whose faith were unfriendly to population; an example of which he furnished in the shaking quakers? Whatever else may be said of this view, it will at least be entitled to the credit of candor. It, without disguise, displays the undefinable and unconstitutional power now asserted; it assumes that Congress has a right to regulate their whole internal polity—for, if their religion and their connexion by matrimony are just subjects of Congressional authority, what subject of social regulation would lie beyond the reach of their control?

Lest I weary you, sir, I will now proceed to the last branch of this interesting subject, which I proposed to discuss: Is it expedient or just?

The first objection that presents itself is its immeasurable injustice. By whom was the country acquired? By the common treasure of every part of the Union, and by the exclusive counsels of that portion which you seek to interdict by your measure. Yes, sir, I say the exclusive counsels. The opposition which was made to the treaty by which we acquired it, is too recent and too notorious to require proof. Nay, sir, so inveterate is the

opposition, that we have a portion of its leaven mingled with the present discussion. The gentleman from Rhode Island has told us that we acquired it by treaty with a man who has become a private gentleman, and who had no title himself. A country thus acquired, of boundless extent, is to be shut against us. Were our opponents not under the influence of an insatiable ambition, they would content themselves with the enjoyment of a large and disproportionate share of this country, to which they would exclusively succeed, independently of any legal regulation on this subject. This is too obvious to be denied, when we take as our guide the history of our own country, which furnishes indubitable proof that slaves, to any considerable number, are never seen beyond a given parallel of latitude. When you cast your eye on the map of the country in question, it is palpable that much the largest portion would never be occupied by a slave. Why are they not content with this great natural advantage? Can you bring your minds to believe that we shall sit quietly under this act of iniquity, as insulting as it is injurious? Sir, no portion of the United States has been more loyal than the South. Amid all the vicissitudes of party and the violence of faction—in peace and in war—in good and in evil report, we have respected the laws, and rallied around the constitution and the Union. To the Union we have looked, as the ark of our salvation and the resting place of our hopes. Is this your reward for our loyalty? Sir, there is a point where submission becomes a crime, and resistance a virtue. In despotic countries even the despot is obliged to keep some terms with his subjects: in free states you more readily arrive at the point to which I allude. Beware how you touch it, in regard to the South! Our people are as brave as they are loyal. They can endure any thing but insult. The moment you pass the Rubicon, they will redeem their much abused character; they will throw back upon you your insolence and your aggression. But, let us suppose they will quietly submit to the wrongs you inflict, what must be their feelings friendly to Union—to that harmony so essential to our common prosperity? What is the foundation of our connection? The Federal compact. He must, indeed, be profoundly ignorant of human nature, if he suppose the Union reposes on such a foundation. No, sir, it is a common interest, and those kind and affectionate sentiments which the preservation by a parental government of that interest generates, that form its prop and security. Withdraw these, you may preserve the form, but the vital part is gone. To what end do you encounter this great risk? To exclude slavery from Missouri? That cannot be your object. You have

slaves there already. These, you say, you do not mean to touch. The principle, then, is given up : the stock they have already there will multiply and fill the land.

But we are gravely told, and upon it all the changes have been rung to excite the prejudices of the non-slave holding states, that the political influence resulting from the slaves which will be carried to this country is the principal ground of objection to Missouri's coming in without restriction. You reduce, say they, the white man to an equality with the slave. What sophistry is this ! Will not the slave have the same influence in Georgia or Virginia as in Missouri ? His removal to the latter state is in no way to increase it. But they will, we are told, multiply faster in Missouri than in the old states. Mark the dilemma in which gentlemen are placed: at one time they weep over the condition of the slave; their tender souls are overflowing with kindness and compassion to their sufferings. To ameliorate their condition is their professed object. What course do they pursue to accomplish it ? To pen them up, as my honorable friend from North Carolina has justly remarked, and cut them off from those benefits which await them in a new and fertile country; the enjoyment of which produces that increase they so much affect to dread. Let us hear no more of humanity; it is profaning the term. Their object is power. They assume the mask of humanity for the purpose of seducing tender consciences, and they, as far as their policy can effect it, devote the very beings whose welfare they pretend to urge as a reason for the measure of which we so justly complain. Yes; humanity is their motto. The interest, the peace, the happiness of the whites, form with them the dust of the balance; their affections are alive only to the condition of the slave. They speak of their measures with great deliberation, and invite us to be calm. They are afar off while this new drama is performing. Turn out comedy or tragedy, they are equally unaffected. On the contrary, we are to be involved in the catastrophe. It is not left to us to stand aloof as mere spectators. We shall have to act a part. We may lose, but cannot gain. We furnish the stakes; and they are nothing less than the vital interests of our country. The gentleman from Massachusetts (Mr. Otis) has been edifying in his suggestions as to what we are to fear from St. Domingo, unless we adopt his counsels. The mention of St. Domingo calls up a train of unpleasant recollections. Its history is replete with instructive lessons upon this subject. Let us alone, and we have nothing to fear. It is your pretended solicitude for our welfare that constitutes our danger. It is the doctor, and not the disease, we

dread. Yes, sir, the pseudo friends of humanity, in France, far beyond the reach of the effects of their own policy, in the spirit of fanaticism issued the celebrated decree that involved the fate of that devoted island. Its caption was "liberty and equality." It no sooner reached its object than the bands of society were dissolved. Monasters stalked over the face of this wretched country, and their footsteps were every where traced by conflagration, and rapine, and murder, and lust, and all the unutterable horrors which the most ferocious passions, coupled with unbridled power, could inflict. The few wretched survivors, who fled before the fury of the storm, carried to every part of Christendom their tale of suffering and of woe, which, by its irresistible pathos, drew tears of pity from every eye. But, where or when has it been known that fanaticism has paused to reflect on consequences? Experience, the lessons of prudence and of caution, are presented to it in vain. But, sir, let us analyze this argument of the gentleman from Massachusetts, if, indeed, argument it may be called. If, says he, you extend slavery to Missouri, the emissaries of St. Domingo will penetrate this interior region, and preach the doctrines of insurrection. Indeed! If, then, according to the logic of this gentleman, the slaves be retained in the Atlantic states, to which the access is the most easy, and swell to a disproportionate number, we have nothing to apprehend; but, if removed to the interior, and so diffused as to be entirely out-numbered by the white population, then, and not till then, are we in danger. Can any thing be necessary to refute a proposition, when to state it is to destroy it?

But, gentlemen defend the course they pursue, on the ground of charity and benevolence to this unfortunate species of population. Charity, sir, in its just sense, is one of the first of virtues; it bears upon its face the impress of its celestial birth; it prompts the man, at the expense of his own comforts, to give food to the hungry and clothing to the naked. If his scanty means deny him this privilege, he acts the good Samaritan—hours balm in the wound, and binds up the broken heart. His reward is ample here and hereafter. Here, in the uplifted and thankful eye of wretchedness relieved; there, it is a ministering angel at the throne of eternal justice. But that charity which seeks to gratify itself at the expense of another; which subjects the actor to no sacrifice, to no danger, is mere hypocrisy—'tis the reluctant homage which vice pays to virtue. In which predicament my opponents stand! It is my property they seek to take; it is my peace, my safety, my happiness, that are put to hazard. I exempt the gentleman from Massachusetts

(Mr. Otis) from any part of these allusions: he has frankly told us that he is actuated by no benevolent consideration; he justifies his course on the score of policy.

We are continually reproached with having on our side every advantage from the union; that we have contrived to gain an unjust portion of power through our slaves, and have given in return no equivalent. Let us analyze this charge, and test its justness. According to the principles of those who hold all men equal, it is we who have made the sacrifice, rather than gained an advantage, in the ratio of representation, as it regards our slaves. In submitting to the deduction of two-fifths of this species of population, we have surrendered precisely that proportion of our just claims. Independent sovereignties, entering into federal association, agree that their voice in the union shall depend on their relative numbers. What right has one of the parties to enquire into the condition of any portion of the inhabitants of another? That is an affair exclusively belonging to the contracting sovereign. In the spirit of compromise, however, the sacrifice was submitted to. Gentlemen say they do not mean to disturb it. Why harp continually upon it? Is it to instil incurable hostilities into the body politic; to array one portion of the United States against another? The parties heretofore existing in the United States, formidable as they were, especially at one time, lost all capacity for mischief by being broken up in fragments. Each state, each neighborhood, was more or less divided; and thereby the force and effect of their violence was rendered comparatively harmless. Such will not be the case when you divide by latitudes. In their collisions, the Union will shake to its foundations. The gentleman from New Jersey, on another subject, expressed a partiality for parties; their existence he supposes essential to the health of the political body. Being myself fond of calm, I am willing to dispense with them altogether. His views might possibly be correct, could you regulate its extent as does the doctor his means by drachms and scruples. But I fear, sir, if I am not greatly deceived by the signs of the times, that this gentleman will have to acknowledge, by melancholy experience, that his remedy has of itself become a dreadful disease. But, sir, I have wandered from the point, which is—that we have an advantage for which we have given no equivalent. No. Take it for granted, however, that it is a favor, (our ratio of representation,) and not a sacrifice. Do we not pay in solid bullion for it? Is not taxation directly in proportion to our representation? But is this all? What have we not done for the navigating interest, and for the manufactures of our eastern

brethren? Three years past, at the suggestion of the latter, did we not unanimously pass a law, in conformity to their wishes, which interdicted the intercourse between this country and the British West India Islands in British ships, with a view to the encouragement of the shipping interest of the East? Have we not also passed a navigation act, at their instance; and, in short, have we not done whatever we have been requested to do which could lead to their advantage in this regard? Had the South been influenced only by the sordid consideration of their own interest, they would have been content to employ the cheapest carriers, whether alien or domestic. They were influenced by a more magnanimous policy. We held our brothers of the East as ourselves, and, in promoting their particular interest, at our immediate sacrifice, we looked at the subject in a national point of view only. And, although a continual clamor has been kept up against us upon the subject of manufactures, yet the laws which have been passed for their encouragement indicate the very liberal feelings of the South upon this subject, not to say an extravagant partiality. In the opposition which has taken place to the unreasonable demands (or, at least, so esteemed by many) made by the manufacturing interest, no hostility to the North or East mingles therewith; it results from a conviction that a system, which can be sustained only by taxing extravagantly the productive labor of the country, cannot be founded in a proper regard to the suggestions of true political economy.

We are asked, why has Virginia changed her policy relative to slavery? That the sentiments of our most distinguished men thirty years past entirely corresponded with the course which the friends of restriction now advocate; that Mr. Jefferson has delineated a gloomy picture of the baneful effects of slavery;* and that the Virginia delegation, one of whom was the late President of the United States, voted for the restriction on the north-western territory. When it is recollected that the Notes of Mr. Jefferson were written during the progress of the Revolution, the mind operated upon by its incidents, as novel as stupendous, it is no matter of surprise that the writer, who was performing so distinguished a part, should have imbibed a large portion of that enthusiasm which such an occasion was so well calculated to produce.

With the eye of benevolence, surveying the condition of mankind, and a holy zeal for the amelioration of their condition, he gave vent to his feelings in the effusion to

* Mr. King, in a speech subsequently delivered, stated that Mr. Jefferson first suggested the restriction.

which our attention has been called. It is palpable these are the illusions of fancy. Sad reality has since taught him, as his example shows, that the evil, over which he wept, is incurable by human means. By which will you be influenced, the undisciplined effusions of a benevolent heart, or the sober suggestions of cool deliberations, and ripened judgment? As to the consent of the Virginia delegation to the restriction in question—whether the result of a disposition to restrain the slave trade indirectly, or the influence of that enthusiasm to which I have just alluded; or, as is said by some, a political measure to counteract certain schemes then going on, whose object was, according to the rumor of the day, a severance of the Union, it is now not important to decide. We have witnessed its effects. What might have been speculation before, is now matter of experience. The liberality of Virginia, or, as the result may prove, her folly, which submitted to, or, if you will, proposed this measure, has eventuated in effects which speak a monitory lesson. How is the representation from this quarter, on the present question? Virginia is constrained to cry out, And you, too, my children! I appeal to the Senators from that quarter—to their filial affection, and conjure them, by the kindness we have shown them, to arrest the unfeeling injustice meditated against us. Did we not give you the land which now constitutes your home, and which you liken, in your own language, to a Paradise? Did we not protect you in your infancy? Did we not arrest the policy of the east, which sought to fetter your mighty river, for no matter what purpose, whether disunion or to repress your growth. Did we not place you by our side in this and the other hall, and impart to you the high privileges of self government? You have now become powerful: will you, in the first moment we have ever solicited your aid, abandon us and go over to the enemy? Will you surrender yourselves to the seductive influence of an envious step-mother, who sought to strangle you in your infancy? Dare you lift your parricidal hand against your natural parent? In the face of the most unpromising symptoms, I will continue to hope better things.

We have heard much of the moral and political effects of slavery. Instead of the picture furnished by theorists and enthusiasts on this subject, let us consult the testimony of history from the first to the present age. In the master states of antiquity, Greece and Rome, it existed in its worst form. And, yet, such was the march of the human mind, in these distinguished republics, in all that was ennobling in morals and science, that, it continued to shine through the long eclipse of interposing darkness. And, in the modern world, the lamps of science

and of liberty were lighted up from its yet unexpired embers. I will not pretend to retouch the picture delineated by the masterly hand of my distinguished friend from Maryland. His glowing and sublime eloquence, the exclusive companion of superior genius, lifted the curtain which separates us from past ages, and caused to pass in review the heroes of Marathon, Salamis and Thermopylæ—splendid achievements, that lose nothing in comparison with all that has since intervened. If you descend to modern times, the result of experience in our own country is no less opposed to the suggestions of theory. I will not enter into the invidious task of contrasting the south with the north. How disastrous must be that question, whose discussion permits a member of this body, in recounting the splendid monuments of American skill and bravery, to content himself with naming Bunker's Hill, Bennington and Saratoga ! Could not the gentleman from New-Hampshire permit his national feeling to survive so long, as to have recounted the Cowpens —King's Mountain, Guilford, Eutaw, York, and finally the victory of New-Orleans, whose memory will live co-extensively with the flood on whose margin it was achieved ? Why this invidious distinction ? Does the honorable gentleman imagine, I take a less interest in indulging my pleasing recollection of the prowess of my country in the first, than in the last ? No, they were my countrymen—the fame they acquired was a common stock ; my portion of the inheritance I will not surrender.

Let it not however be supposed, that in the abstract I am advocating slavery ? Like all other human things, it is mixed with good and evil—the latter, no doubt, preponderating.

The gentleman from Massachusetts, (Mr. Mellen) tells us, he is legislating for after ages. His view disdains the limited horizon of the present. Poor arrogant man, not content to act well his part in the little span assigned him by his creator, he builds his mole-hill, and challenges immortality for his labors ! A few revolving years, they are erased with the same facility, as are the characters by the flood, on whose sandy margin they have been inscribed. Tell me at what pure fountain of knowledge, have you drank in the holy inspiration, which enables you to penetrate the dark cloud which hangs on the future, and to adapt your counsels to the endless vicissitudes of human affairs ? Satisfy me on this, before I surrender present happiness. I fear you have commenced this distant voyage under the most unhallowed auspices. You violate the constitution ; you trample under feet the plighted faith of the nation ; you do an immeasurable act of injustice to one half the nation ; you lay the founda-

tion of incurable hatred ; and all this, for consequences which none can see, but that Providence in whose hands is the destiny of nations. Sir, reflections of this kind call up a fearful subject of contemplation. Your government, upon its present scale, is, as yet, but an experiment. While the people are virtuous, it may equal all our fond hopes and anticipations : but, when it shall reach from ocean to ocean, become populated to excess, and poverty and vice shall have shed their baneful influence ; when materials of this kind shall be subjected to the intrigues of the wicked and ambitious ; who, judging even from the present time, is sanguine enough to hope that we alone are to be exempt from the calamities, to which man has been born heir. Who can pretend to predict, that the present order of things will be able to ride out the storm ? And if, conforming to all human things, we too, shall experience adversity : if this last hope of afflicted humanity shall, as the precursor of its final doom, be rent in twain ; what then will be the fruits of your policy ? On this side the Mississippi, a black population : on the other, a white. The latter, you tell us, is feeble, inadequate to its own defence, we present only a temptation to conquest. Instead of presenting a rampart, you have surrendered us, by your policy, an unresisting prey to our now hostile neighbors. It may perhaps be consistent with retributive justice, that, our country overrun, you in turn may severely feel the terrible effects of your present injustice. Let me conjure the gentleman to return from his distant voyage, and unite with us in consulting the happiness of the present generation. Whether slavery was ordained by God himself, in a particular revelation to his chosen people, or whether it be merely permitted as a part of that moral evil, which seems to be the inevitable portion of man, are questions I will not approach: I leave them to the casuists and the divines. It is sufficient for us, as statesmen, to know that it has existed from the earliest ages of the world, and, that to us has been assigned such a portion, as, in reference to their number and the various considerations resulting from a change of their condition, no remedy, even plausible, has been suggested ; though wisdom and benevolence united have unceasingly brooded over the subject.

However dark and inscrutable may be the ways of Heaven, who is he that arrogantly presumes to arraign them ? The same mighty power that planted the greater and the lesser luminary in the Heavens, permits on earth the bondman and the free. To that Providence, as men and christians, let us bow. If it be consistent with His will, in the fullness of time, to break the fetter of the slave, he will raise up some Moses to be their deliverer. To him

commission will be given to lead them up out of the land of bondage. At his approach, seas will subside, and mountains disappear. When this revelation shall be made, & the jubilee of emancipation be proclaimed, philanthropy will lift its voice to swell the joyful note, which, sweeping the continent and the isles of the new world, and resounding through the old, shall cause the oppressor to let go his prey, the dungeon to surrender its victim, and give emancipation to the slave. Till then, let us draw consolation from the reflection that, however incomprehensible this dispensation may be to us, it is a link in that great concatenation which is permitted by Omnipotent power and goodness, and must issue in universal good.

I will not weary the patience of the Senate by detaining them any longer on this subject. It is the speaker, and not the theme, that is exhausted. However threatening the political horizon may now appear, I will not suffer myself easily to be cast down. No, sir, when I reflect upon our ancestors, who, flying oppression, braved a waste of waters, bringing with them nothing but their household gods and an unextinguishable thirst for freedom, taking root on a barbarous shore, growing up with a rapidity unexampled in the annals of mankind—uniting against the attempts of tyranny, and consummating the glorious Revolution: when I reflect on the spirit of concession and brotherly love in the formation of the constitution; and when I finally contemplate the glory and happiness it has produced, I will not now distrust that Providence which has been pleased to dispense to us so many & such distinguished blessings. I will not permit myself to believe that this mighty scheme of political salvation, in which all nations are interested, will pass away like the grass of the field. I will rather continue to indulge the hope, that we shall remain united and free; that we shall advance to that height of prosperity when all nations shall resort to us, whence to draw the oracles of political wisdom and the sublime truths of civil and religious liberty. That such may be our fate is the prayer I will unceasingly address to the Great Disposer of all human events.

17

SPEECH

OF

MR. P. P. BARBOUR,

OF VIRGINIA,

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE
UNITED STATES, FEBRUARY 10, 1820,

On the following amendment proposed by Mr. Taylor, of N. Y.
to the Bill authorising the people of Missouri to form a Constitution :

Section four, line twenty-five, after the word "States," insert the following: " And shall ordain and establish, that there shall be neither slavery nor involuntary servitude in the said state, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any other state, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service, as aforesaid: *And, provided, also*, That the said provision shall not be construed to alter the condition or civil rights of any person now held to service or labor in the said territory."

Mr. CHAIRMAN : In rising to address you at this time, I feel that I labor under great disadvantages; I am about to embark in the discussion of a subject, which has already been greatly exhausted; I am about to do this too, at a period of the day, when talents of a higher order than I can pretend to, would scarcely command attention; these circumstances are, of themselves, sufficiently discouraging; but the greatest difficulty of my situation, consists in the frame of mind, in which I fear the committee have been left, by the closing remarks of the member from Pennsylvania, (Mr. Sergeant) who has just resumed his seat: he made such persuasive appeals to their feelings; he painted in such glowing colors of pathetic eloquence, the horrors of slavery in general, and particularly the agonizing scenes of husbands separated from wives, & parents torn from children; that I fear the agitations of an excited sensibility, will be unfriendly

to the dispassionate investigation and correct decision of this great question.

If, sir, the cause which I have risen to defend, required talents, like those which I have just described; talents which, by exciting the sympathies of the heart, cause the hearers to forget the allegiance due to the judgment, then, indeed, I should abandon the unequal, the hopeless contest, in which I should find myself engaged: but the duty which devolves on me, is of a different kind—it is to endeavor, as far as I can, to allay the tumult of feeling, which has just been excited, and then, in the language of plain truth, to attempt to convince your minds, of the error, of the gentleman's reasoning.

Let me, then, tell the gentleman, that the picture which he has drawn of the suffering, incident to domestic slavery in the south, is too strong; that he has shaded it too deeply, with the coloring of his own imagination; that, though we do keep the yoke of servitude, upon the necks of our fellow men, yet our humanity has lightened its pressure; that, though slavery, disguise it as you will, is still a bitter draught, yet, the same humanity has lessened the bitterness of this draught, by the infusion into it, of many drops of consolation; that, in fine, such has been the continually increasing melioration, in the condition of that people amongst us, that they now, in general, experience the utmost degree of indulgence, which is compatible with the relation, of master and slave.

But, sir, I find that I am digressing from the subject, which I rose to discuss. Are we now called to decide, as an abstract question, whether slavery is, or is not justifiable? No, sir, that question had been long settled, before the formation of our constitution; slavery existed in many of the states at that period; its existence and its continuance were recognized by that instrument; the states surrendered to the federal government, no power over the subject, except after a given period, to prohibit the importation of slaves from abroad. I tell, gentlemen, then, that this is neither the time nor the occasion, for the discussion of the abstract justice, or injustice, of slavery; if we were called upon, in our respective state legislatures, to decide upon its continuance or abolition; or if we were now in convention, for the purpose of forming a new federal constitution; in either of these cases, their arguments of that kind, would have some application. But who are we, and what are our functions? We are the creatures of the constitution, not its creators; we are called here to execute, not to make one. Let gentlemen, then, remember, that it is not sufficient for them to shew that slavery cannot be justified in itself; that it is,

if you please, a moral and political evil ; they will yet fail to maintain their ground, unless they can also shew that the constitution gives us power over it. An example or two, will furnish a better illustration of my idea, than general reasoning. Luxury is considered a great political evil in any state, but particularly in a government like ours, whose stability depends, upon the virtue of the people. Let us suppose that this political malady, prevailed in an extreme degree in any one, or all of the states of this Union. Is there a member of this committee, who will undertake to say, that we could attempt to cure the evil, by the passage of sumptuary laws ? Again, sir, consider all those violations of morality and religion, which are the subjects of the criminal jurisprudence of the several states; they are all moral and political evils; and yet no member of this committee will venture to affirm, that we can attempt to arrest them by our legislation ; and why, sir ? For the obvious reason that, though they are evils, and of a kind too, which may vitally affect the stability and prosperity of the whole body politic, yet they are the subjects of state legislation, over which no power has been transferred to us by the constitution. Sir, as well might the British Parliament attempt to exercise its authority, in the correction of what it thought to be moral or political evil, in the several states ; because, as it respects any subject, over which the constitution has not given us power, we are as alien a government, in relation to the states, as is the British government.

I have made these remarks, for the purpose of disengaging this question of extraneous difficulty; of shewing what the question is *not*, that we may better understand what *it is*. The question is not, then, whether slavery is in itself an evil, but whether, supposing it to be such, we have the power to correct it, in relation to Missouri ? The committee will perceive, from my mode of stating the question, that I mean to discard from my consideration the enquiry into the humanity and expediency of the proposed restriction; I do this because ample justice has already been done by abler advocates than *myself*, to those views of the subject ; and because, too, I can conceive no argument so strong, to prove the inexpediency of the measure, as will result from proving, as I hope I shall be able to do, that we have not the power to impose it. Let gentlemen reconcile it, if they can, with their ideas of humanity, to prevent an increase of slaves, by denying to them an increase of comforts ; let them, if they can, reconcile it with their ideas of justice or expediency, to keep this vast country uncontaminated with slaves, for millions of freemen yet unborn, at the hazard

of the happiness and safety of millions now existing; if, upon these points, they differ with me in opinion, they will at least, agree in this proposition; that, under no circumstances, ought we to attempt to do that, which we have not power to do. That we have no power, to impose this restriction, I shall attempt to prove, by shewing, that it would be in direct violation of the constitution, and of the treaty of cession from France, of 1803. Before, however, I enter particularly into the reasoning in support of the view, which I have just mentioned, I beg leave to notice some remarks, of the member from Pennsylvania, in relation to the construction of the constitution. He told us, that there was an increasing liberality in this respect; and that, particularly, in relation to any measure of a beneficent character, he looked into that instrument, with a desire to find the necessary power: Yes, sir, there is indeed liberality, and in an increasing degree; and I must be permitted to say, that we are extremely apt to think that we find that, which we seek with a desire to find. The gentleman referred to some examples of this liberal spirit. I candidly own to you, sir, that I am filled with the most serious apprehensions, at the progress which we have already made, and which we seem disposed yet to make, in this respect; let us for a moment mark it: At one time a National Bank is proposed to be established; it is discovered that this will facilitate the collection of the public revenue; and hence, a power is derived to establish it, although a proposition was made in the convention, to give the power of granting charters of incorporation, which did not pass: * at another time a great system of internal improvement is proposed; it is recommended by its beneficence, in annihilating space, and bringing nigher together the extremities of the republic, by roads and canals; and from the power to declare war, is derived a power to establish military roads, although one of the schemes of government, proposed in convention, contained a proposition to establish *military*, as well as *post* roads, which prevailed only so far as relates to the latter.† Thus, sir, we have been continually advancing, step by step, in the enlargement of the rule of construction, and every previous decision, becomes a precedent in aid of that, which next follows. Whether we have yet arrived, at the point marked by the limits of the constitution, it seems to be impossible to say; for, as we advance, those limits, like our horizon, seem to recede; so that whatever step we have last taken, marks not the utmost verge of our power, but only the point to which construction,

*See Journal of Federal Convention, page 260.

† Ibid. p. 75.

up to that time, has carried us. By the aid of construction, then, we find ourselves in possession of very large powers, and defined by very unsettled boundaries, in relation to the *old* states ; if, in addition to this, we assume the power now claimed by gentlemen in relation to *new* states, which I shall attempt to shew is entirely without boundary at all, then, indeed, I shall begin to think that parchment delineations of power are little else than form ; that mankind have no ligaments strong enough to bind the hands of their fellow men when in power. If the doctrine now contended for be true, let us not, as in other days we were wont to do, enquire what powers *have* we, but what *have we not* ?

These remarks, have been called forth by those, which were made by the member, who preceded me ; I now beg leave to call your attention, to the very question before us, and, I will endeavor to subject it, to the severest scrutiny, of which I am capable. The bill before us proposes to authorize the people of Missouri, to form a constitution and state government ; an amendment is offered to the bill, which requires of the proposed state, as a *sine qua non*, to its admission into the Union, that it should by a compact, irrevocable without the consent of Congress, make a provision, the effect of which would be, to prevent the further introduction of slaves into that state, and to emancipate the children of all those now there ; and, the question is, whether we have power to impose this condition, which the amendment proposes ? The advocates of the amendment, contend that we have the power ; on our part, it is contended, that we have not.

The question being thus precisely stated, I will remind gentlemen, at the threshold of the discussion, that they hold the affirmative ; that, therefore, the burden of proof devolves on them ; I do not mention this, from any apprehension of the weakness of my position ; on the contrary, such is my confidence in its strength, that I feel I can with safety assume upon myself, the burden of proof, when it belongs to my opponents ; but, I wish it to be distinctly understood, that I shall consider this, as a gratuity on my part, and not an act of duty.

Both the members from Pennsylvania (Mr. Hemphill, and Sergeant) have relied much, upon the ordinance of 1787, the 6th article of which, forbids slavery in the north western territory, as shewing the power of the old Congress, in relation to this subject ; as this is anterior to the constitution, and as it may somewhat conduce to system, to observe a chronological order, I beg leave first to examine the character of that act, and what influence it

ought to have, upon this question. This celebrated act of the Old Congress, has been called an usurpation ; gentlemen have expressed their astonishment, at this epithet ; I am prepared, from the most unquestionable authority, to prove the charge, and for that purpose, I beg leave to read, from the 38th number of the Federalist, the following extract :—“Congress, (that is the Old Congress) have undertaken to do more—they have proceeded to form new states ; to erect temporary governments ; to appoint officers for them ; and to prescribe the conditions on which such states shall be admitted into the confederacy. *All this has been done, and done without the least color of constitutional authority.*” These, sir, are the words of a member, and, let me add, a distinguished member of the Federal Convention ; one, who after he had contributed to the formation of the constitution, devoted eight years of his life, to its actual administration. If, then, the Old Congress, in the enactment of that ordinance, acted without the least color of constitutional authority, it is obvious, that the act must be utterly void, as an act of legislation ; has it force in any other way ? Gentlemen, conscious of this vital defect, have, in effect, conceded it, by resting its authority, upon the footing of contract ; they say, that, after the cession by Virginia, and the enactment of that ordinance, it was submitted to Virginia for her ratification, and that it was ratified. It has already been shewn, by the Speaker, both from the resolution of Congress and the act of the Virginia legislature, that, it was an alteration in the number and dimensions of the states, to be carved out of that territory, which was alone submitted, and which, therefore, was alone intended to be decided ; but, there are other insuperable objections to this ordinance, considered upon the footing of a contract, having any influence, upon the present question.

It has been correctly said, that, to make a valid contract, there must be two parties. Now, tho' Virginia should be considered as having been competent, yet, the Old Congress was not ; I have shewn you that they had not the least color of constitutional authority over the subject ; it follows, then, that they were as little competent to contract, as to legislate in relation to it. But, again, sir ; Supposing the Old Congress to have been a competent contracting party, it is conceded on the other side, that, considering the ordinance in the light of a contract, the assent of Virginia, was indispensable to its validity. Now, sir, to make that at all analogous to the present case, it is necessary that France should give its assent, to the proposed restriction of sla-

very ; because France having been the power which ceded Louisiana, stands in the same relation to that country, as Virginia did to the north western territory. Surely then, there can be no weight due to this ordinance, as a precedent, when we reflect, that it emanated from men, having no jurisdiction over the subject matter to which it relates; and that, too, at a time anterior to the formation of our constitution, which is the only source of our power, and which, I shall attempt to prove, clearly gives us none such as is contended for.

One gentleman, from Pennsylvania, (Mr. Hemphill,) attempted to derive some aid to his argument, from the Journal of the Federal Convention ; he said, that, as the clause originally stood, it authorized Congress to admit new states, upon the same footing with the original states; and as these words are not found in the existing constitution, he thence infers that, it was intended to vest Congress, with a discretionary power as to conditions ; if the gentleman had examined the same clause, in its original shape, he would have found that it also contained this provision, " that Congress might make conditions with the new states, as to the existing public debt ;" Now, sir, the gentleman I am sure, would not be willing to extend the inference on which he relies, to this part of the clause ; because, if he did, the consequence would be that, the new states would not be liable for their proportion of the public debt ; the truth, is, that both sets of words were omitted for the same reason. That is, because they were both necessary consequences of the admission, and they were, therefore, supererogatory. Many other examples might be found by examining the Journal, from which it was evident that particular expressions included in the first project of the constitution, were omitted in the existing one, because they were necessarily embraced, in the remainder of the same clause, or were the unavoidable result, of the construction of the whole instrument. This argument, then, is utterly untenable.

I come now, sir, in the order of discussion, to the constitution itself; various provisions of that instrument have been relied upon, in support of the proposed measure ; and, here, sir, the first remark to be made is this :—That the friends of this restriction, not only trace this power up to different principles, but, to such as are utterly incompatible with each other ; and in relation to which, therefore, the assertion of one, is necessarily the refutation of the other ; some of the gentlemen say, that we are authorized to impose the restriction, by virtue of our legis-

lative power ; others say, we derive the authority from compact ; I said, that there was an incompatibility in their principles, and I will now endeavor to prove it. When we make a contract, we consult not our will only, but that of the other party also : and it is the concurrence of our wills, which can alone give being to a contract ; but in legislation, our own will is the rule of our action ; *voluntas stat pro ratione*—we speak to command—we command to be obeyed ; were I disposed to give a very strong example of the legislative style, I would quote the imperial edict, as given to us in the book of highest authority : “ *Cæsar Augustus* sent forth a decree, saying, all the world should be taxed.” We do not, indeed, use such a lofty style of imperial dictation ; nor does the extent of the civilized world, constitute the bounds of our dominion, as in the days of the second *Cæsar* ; but our legislative power, within the lawful range of its authority, is just as unlimited, save only, that we are subject to the control, which the exercise of a sound discretion and our responsibility to our constituents, impose upon us. I repeat, then, that to attempt to maintain the legislative power, is to abandon the ground of compact ; and *e converso*, to attempt to maintain the principle of compact, is to abandon the legislative power ; because the one implies consent, as essential to its existence, whilst the other acts independently of all consent, in the execution of its own will. I will now, however, with the leave of the committee, proceed to examine the several provisions of the constitution, which have been relied on, in the course of the discussion, with a view to support the one, or the other, of these principles. Before I do this, however, I must make this apologetic remark to the committee, for referring to clauses, which have been so often quoted. That the advocates of the restriction, having to maintain their principles, have selected their own texts of the constitution, on which to comment ; that, as my argument consists of a counter commentary to theirs, I am constrained to refer to the same texts from necessity.

The first which I shall examine, because it has been most relied on, is in these words : “ *New states may be admitted by the Congress into this Union.*” Now, say gentlemen, this provision is *permissive*, not *imperative*. That as Congress may, so they may not, admit ; and as they may not admit, therefore they may, in their discretion, impose their own terms. On my part, it is contended that the power of Congress is limited to the simple alternative, of admitting or not admitting ; that even this power is subject to the modification, that they have not the moral right, to refuse admission to a territory, whose situation and circumstances fit it for admission.

I would illustrate my idea on this subject, by a reference to the powers, of laying taxes and borrowing money. We have the power to obtain, either by taxation or loan, millions of dollars, if the treasury were even full to overflowing ; yet no man will say, that we have the moral right to do this, much less to menace a state or states, with the exercise of this power, unless it, or they, would agree to some condition, injurious to their rights. But let us return to the clause. What is to be admitted ? *A state.* Although much has been already said in relation to this word, I beg leave to add something more. The definition of the word *state*, in general, need not be resorted to, because it is to be defined here, in the sense in which it is used in the constitution. There is no rule of construction so universal, as it respects laws, treaties, or constitutions, as this, that the same word repeatedly occurring in the same instrument, shall receive the same interpretation. Thus, sir, no one will deny, when both the federal and state governments are forbidden, to pass bills of attainder, or *ex post facto* laws, that these terms mean the same thing, in each instance. Take another example, which comes nigher to the present question : Suppose, in the very clause now under consideration, it had, from abundant caution, been added, that the new states, upon their admission, should be entitled each to two Senators and their proper proportion of Representatives; no man would have doubted, but that the Senators and Representatives, must possess precisely the qualifications prescribed, in a previous part of the constitution, to wit, a certain age, residence, and citizenship ; and so, sir, of any other term in the whole instrument. Construe the word *state*, then, like all the other words in the constitution, in the sense in which it is previously and repeatedly used, and there would at once, be an end of the question. For, when a new state is to be admitted, it is just such a state, as is produced by the various provisions, of the constitution.

But, again, sir, *new* states are to be admitted. Now this word *new* is clearly put in contradistinction to *old*; and this contradistinction, is what constitutes and defines the difference, and the only difference, which was intended to be expressed ; as naturally, as when we speak of a *young* man, we put him in contradistinction to an *old* one ; but with this difference only, we mean a natural being, of the same powers and faculties, such as will, judgment, memory, &c. So, sir, when we speak of *new*, in opposition to *old* states, we mean just such a political being, possessing the same political powers and faculties, distinguished only, by the circumstance of age.

This assumption, that because we have a power to re-

fuse admission, we therefore have a right to impose terms upon that admission, proceeds from the misapplication of a principle in itself perfectly true, but which has no sort of application to the present question. It is this, *that he who gives, has a right to prescribe the terms of the gift.* This is entirely true, in relation to property which belongs to ourselves, and which we have not only the power, but the moral right, to give or not, as we please; but it is entirely untrue, if it be attempted to apply it to a case like the present, when we are acting not for ourselves, but as trustees for others; not in relation to any thing which belongs to us, but in relation to the subject matter of that trust; in that case, not we, but those whose agents we are, have the right to prescribe terms, as I shall endeavor to show, has been done by the constitution. To shew the fallacy of this doctrine, that because we may give, or withhold our assent, we may therefore impose our own terms, permit me to call your attention, to some analogous provisions of the constitution. Congress has power to give its consent or not, that a state may lay duties on imports. Suppose an application made for such consent, is there a member of the committee who would contend, that Congress had a right to give it, upon condition that the state should give some equivalent? For example, that it should agree in its turn, that its exports should be taxed; no one, I am persuaded, will attempt to maintain this position. Again, sir, Congress may consent or not, that a state may keep troops in time of peace; would they have a right to attach as a condition to that consent, that the state should submit to the imposition of a direct tax, in a mode different from the ratio of representation? No, sir, it will not be pretended; and yet there would be as much plausibility in both of these hypothetical cases, as can well be conceived in any case; because the conditions stated in both, consist in surrendering rights reserved to the states for their benefit; yet Congress could not attach such conditions; the path of duty would be plainly this: if the situation of the applying states were such, that the required consent ought not to be granted, then it would be wrong to grant it for any supposed equivalent; if, on the contrary, circumstances were such as to make the application a proper one, then it ought to be granted without equivalent. I could state other cases of a similar character; these will be sufficient to shew, that it does not follow, because we have a power to refuse consent, therefore we may impose conditions on that consent, when granted.

If we were to impose this condition, we should commit a palpable violation, of that provision of the constitution, which makes it our duty to guaranty to every state

in the Union, a republican form of government. A republican government, is one derived from the people to be governed by it, liable to be altered, reformed, or abolished by themselves. Yet we, whose sworn duty it is to guaranty to the people of Missouri, a government formed by themselves, are now about to declare, that in one important particular, their constitution shall not be such as they desire, shall not be alterable according to their own will, but shall, in the first instance, be such as we choose it to be, and shall not afterwards be altered without our consent. Sir, the plain meaning of the constitution is this—its provisions were intended, not only for the states, which then existed, but for such as should thereafter exist. As far as they then existed, they at once became parties to it; and no man can doubt but that the new states since formed, had they then been in being, would have been received as parties to that family compact, and consequently upon the terms therein contained; but those states, which did not then exist, could not become parties; the original states, therefore, left this constitution as a perpetual power of attorney, empowering us, as their agents, to receive new states into the Union; and the various provisions of that instrument, perpetually accompany it, as the prescribed terms of such admission. If it were otherwise, if we were at liberty to impose what conditions we please upon the new states, our government would present this monstrous anomaly, that the original states had provided a permanent constitution, as it respected themselves, alterable only by themselves, but as it respects new states, had in effect given to Congress, the power of making a constitution for them.

Sir, there is a plain process of reasoning, which, it seems to me, will put to rest all difficulty about the relation, in which new *states* stand to the *old*; and perhaps it is because it is plain that it is not observed. It will consist in propounding to the committee a series of questions, all of which, I undertake to affirm, that every member must answer in the affirmative, and yet gentlemen will find themselves reduced to the dilemma, of answering them negatively, or of giving up the proposed restriction. It might perhaps be sufficient, to put one general question only: Do the various provisions of the constitution apply to the *new*, as well as to the *old* states? But the committee will pardon me for pursuing them in detail, because by that mode I think we shall arrive at such palpable conclusions that the mind cannot withhold its assent. I will now commence the catechetical mode of argument which I have just indicated:—Are the new states entitled to a representation in this house, and, if they be, is it in proportion to their federal numbers?

Are they entitled to a representation in the Senate, and, if so, is it an equal representation? Are they entitled to electors of President and Vice President, and, if so, is the number to be in the compound ratio of their Senators and Representatives? Are they subject to the legislative powers of Congress, such as that of laying taxes, &c.? Are they entitled to the benefit of the exemptions in the constitution, such as the protection against a duty on exports? Are they subject to the various prohibitions in the 10th section of the 1st article, such as that no state shall coin money, &c.? Are they entitled to the benefit of the provision, that the citizens of each state, shall be entitled to all the privileges and immunities of citizens in the several states? Finally, do the 9th and 10th articles of the amendments extend to them, especially the 10th, which puts into the shape of a constitutional declaration, what would have been a necessary rule of construction; namely, That the powers not delegated to the United States, nor prohibited to the states, are reserved to the states respectively, or to the people? There is not, surely, a member of this committee who would venture to answer one of these questions negatively; and yet, from an affirmative answer to them all, there results an inevitable conclusion, that this restriction cannot be imposed. I have assumed that it is impossible to say nay, to any one of these questions; but, to make certainty more certain, let me exemplify in one, or two instances, corresponding to these questions. Can you give a new state three Senators, or can you pare them down to one? Can you release them from their liability, to your legislative power, by stipulating, for example, that they should not be included, in the imposition of a direct tax? These two cases, present examples, the first of a *right* acquired, the second of an *obligation* contracted, by coming into the federal Union. Let me now put a case, in relation to the prohibitions, on the exercise of state sovereignty: Can you authorize a new state, to coin money, or grant letters of marque and reprisal? If every member of the committee must agree that you cannot do, any one of these things, what, permit me to ask, is the reason? Can the mind of man, conceive any other, but this great and obvious principle, growing out of the constitution—that, coming into an association of states, bound to each other, by a mutual compact, the terms of that compact, necessarily apply to them, and consequently impart to them the same rights, and impose upon them, the same obligations which pertained to the elder members of the confederacy? If this be not the reason, I demand of gentlemen to tell me what it is; but, whatever may be the principle, it is entirely sufficient for all the purposes of my argument,

that all agree, that the several provisions of the constitution, which I have before quoted, do, in point of fact, apply to, and operate upon the *new*, as much as upon the *old* states. If this be the case, the federal rights and obligations, of the new states and their citizens, are as much fixed by the constitution, as those of the original states; the grants of municipal power made by the new states, and the reservation of the remainder to them, are as much fixed by the constitution, as are those of the original states. But what is settled by the constitution, cannot be altered by law. If the proposed amendment, then, embrace a provision, which alters the powers or rights of the new states, or their citizens, in any degree, either by enlarging or diminishing them, then it is void, as being in conflict with the constitution, which, I have just shewn, has settled those rights and powers, and which is paramount to the law.

I will now endeavor to show, beyond all question, that the effect of the proposed amendment is to diminish the rights and powers, of the citizens and state of Missouri. When this amendment shall be passed, a citizen of Missouri cannot carry into that state, slaves from any portion of the United States; a citizen of Virginia, will have the right to carry them into his state. I ask you, sir, if these two citizens be equal? And yet one of the clauses of the constitution, which I have referred to, and which, I have shewn, applies to the new states, declares, that "the citizens of each state, shall enjoy all the privileges and immunities of citizens in the several states." It is said, however, that a citizen of Pennsylvania cannot carry a slave into that state, and that therefore the citizen of Missouri, stands on an equal footing with him. I utterly deny the position. Gentlemen here reason from fact to principle. Although such is the law of Pennsylvania, it is an act of their own legislature, which they were free to enact or not, and to repeal at their will: not so with Missouri; for, in the first place, we in effect decree it for them, and then declare it to be irrepealable without our consent. Let us leave all the citizens of the United States at liberty, by their own legislation, either to retain or abolish slavery, and then they are all upon an equal footing in point of *right*, as by the constitution they are declared to be: and if they shall exercise that right in different ways, in the several states, and thus put themselves in different situations in point of *fact*, it is an act of their own will, with which we have nothing to do.

It is said, however, in a memorial presented to us, that this principle would lead to monstrous consequences; that if there were but a single state in the Union, which

tolerated slavery, this principle would not only enable the citizens of that state, to carry slaves to a state whose laws forbade it, but would even enable citizens of the latter state to hold them, contrary to their own laws. These consequences, if they could follow, would indeed be monstrous; but I think I shall be able to shew, that the fallacy of reasoning which leads to them, is still more so. Our principle does not claim for the citizens of one state, greater privileges than citizens of the other states enjoy, but the same only. Now it is obvious, that, if a citizen of Virginia could hold slaves in Pennsylvania, he would enjoy greater privileges than a citizen of that state. This obviates the first part of the objection; the second part is as easily obviated. I have already shewn you that the citizens of two states are perfectly equal in point of right, when they are left at liberty to retain or abolish slavery. If the one retain, and the other abolish it, it is the exercise of their own will, expressed by their own representatives, which produces the difference in their situations. The true principle is this: As in Virginia slavery is tolerated, a Pennsylvanian is equally with a Virginian entitled to hold a slave there; as in Pennsylvania slavery is not tolerated, the citizens of neither state can hold a slave there: but it is competent for either state to vary its legislative provisions in this respect, at its own will.

Let us now see, whether the proposed amendment does not diminish the powers of Missouri as a state. The standard by which to ascertain the powers of a state, is furnished, first, by the grant of legislative power to Congress; secondly, by the prohibitions upon the powers of the states. All other powers, not included in this grant, or in these prohibitions, remain with the states. Such is the explicit declaration of the 10th article of the amendments, already quoted. Now, sir, no man has pretended that the power is granted to the Federal government to abolish slavery, or that it is prohibited to the states to retain it. According to the positive provision of the 10th amendment, therefore, it is retained; and yet gentlemen are now about to exercise this power, as if it were granted to us. Gentlemen will at once acknowledge, that they would not attempt this in relation to the old states; and why, sir? Do you answer that all powers not delegated, nor prohibited, are reserved to them? Then say I, you yourselves admit, that the same article which makes the reservation of powers in favor of the *old* states, applies also to the *new*; and consequently it cannot be so construed as to justify, in relation to the new states, what it forbids towards the old. If, then, the prohibitions and the reservations of power equally apply to the new states;

if, as I have shewn, it is not competent for us to enlarge the powers of the states, either by surrendering any of our legislative powers, or by removing any of the prohibitions, it follows, necessarily, that we cannot *diminish* them, by breaking in upon the fund which they have reserved. The same constitution which contains the grant to us, and the prohibitions upon the states, secures to them the enjoyment of the remainder.

It has already been asked, with great force, if we can break in upon this reserved stock at all, what will hinder us from taking all? Gentlemen have felt the pressure of this argument; they have seen that, without some limitation, we should be led to the consequence that we might take all. To avoid this, they have attempted a limitation, which I will shew you, sir, is perfectly arbitrary. They have said, and such is the language of the Boston memorial, that, from the very nature of the case, we cannot take away Federal rights. It would be strange, if we could not take away what the constitution gives to the states, and yet could deprive them, of what belonged to them in their own right, independently of the constitution. The position of gentlemen would seem to lead to this inference; and yet it is impossible, that they can mean all that their principle would seem to embrace. It is impossible they can mean to say, that all rights and powers, not Federal, can be taken from the states. It is not a federal right, or power in the states, to regulate the course of descents. I have purposely selected this example, because in more than one instance in the *Federalist*, this very case is put, as shewing that, by no latitude of construction, could Congress interfere with it; and yet, if there be no other limitation upon us, except that we cannot touch Federal rights, we might even interfere with this subject. Indeed, sir, if another principle in the Boston memorial be correct, it would lead to the conclusion, that we might interpose in the regulation of descents: it is this: that Congress might attach, as a condition to the sale of its lands, that the owners should never own slaves. If they could do this, it would be more reasonable that they should have the power of regulating descents. The argument would stand thus: We cannot trust the people of Missouri to legislate for themselves, because, possibly, they might establish in their law of descents the principle of primogeniture; and might authorize the perpetuation of estates in the eldest male, by the doctrine of entails. If they should do this, they would create an aristocracy in the country, which would be unfriendly to the principle of republican government, which rests upon the basis of equality. But we are bound to guaranty to every state in the Union, a republican form

of government; therefore, we will interfere with their legislation in regulating the course of descents. I appeal to the committee, whether this reasoning would not be more plausible, than any which could be urged in favor of the condition, of not cultivating lands by slaves. Yet I hope no man will contend, that we could regulate the course of descents. There are rights and powers, not Federal, then, which we cannot take away. To what rule shall we resort, to ascertain which they are? I answer, in the language of the Boston memorial, that it results, from the very nature of the case, that we can deprive a state of no right, federal or municipal, which is granted, or reserved to it by the constitution. Take this rule, all is plain and intelligible; discard it, and every thing is involved in uncertainty and confusion.

An attempt has been made, however, to distinguish this subject from the general rule, arising out of the constitution, upon this ground, that slavery was a question adjusted by compromise, and that therefore no states but those which were the original parties to the constitution can claim the benefit of that compromise; I think it will be found sir, that this position is just as untenable, as the various others from which gentlemen have, I trust, been driven. There were other subjects besides slavery, adjusted by compromise; I will mention the most prominent one, that of an equal representation in the Senate. This is incontestibly proven by the circumstance, that in the clause providing for amendments, it is declared, that the constitution shall not even be so amended, as to deprive any state of its equal suffrage in the Senate, without its own consent; this is the only provision which is forever put beyond the reach of amendment, in the ordinary mode. Now, sir, this was emphatically the work of a compromise, in a vital part of the constitution; the principle of gentlemen, if true, would lead to the conclusion, that the new states were not entitled to the benefit of this provision, because they were not parties to the compromise; yet no gentleman will maintain this position; and if he will not, he must give up the other upon the subject of slavery. Gentlemen complain of what they consider injustice, in the southern representation being increased by their slaves; if they could even shew this, yet they could not, in this way, attempt to alter it. But, upon their own grounds, I am prepared to shew, that the hardship is on our side; for this purpose I beg leave to introduce to your attention Virginia, and Indiana; the whole representation of Virginia in this House is twenty-three, of which number she is entitled to sixteen, from her free population, and to seven, from her slaves; Indiana in this House, is entitled to one mem-

ber; Virginia then has a right to sixteen times as many members here as Indiana, even from her free population; but in the Senate, Indiana, by a provision of the constitution, irrevocable without her own consent, is equal to Virginia. It thus appears that whilst in one House, Virginia, by her slaves, receives an increase of less than one half her representation; Indiana, in the other, has her relative weight multiplied fifteen times, and that too as I have shewn, by an irrepealable provision of the constitution, without her own consent; Whilst Virginia is liable by an amendment of the constitution, even against her consent to be deprived of that part of her representation which she derives from her slaves. I will say nothing about our being taxed on account of our slaves, in the same proportion, in which they increase our representation, as that has been already presented to you.

But, say gentlemen, the powers which the constitution does not give us, we can get from the several states by compact. They say that both the United States, and the state of Missouri, are competent, to make a contract; and that if the one party make a proposition, and the other accept it, this is obligatory on them both. Even if this principle were true, an abundant answer is furnished by an argument which I believe has been already urged, and which I shall therefore only state, without pursuing it; it is, that by the treaty, which was a compact prior in point of time, and paramount in point of obligation, the people of Missouri have acquired certain rights; that therefore it is not competent for you, merely because you are the stronger to say, that you will not comply with its stipulations, unless they will agree to another compact, the effect of which will be, to deprive them of one of the rights, which I shall attempt hereafter to shew, when I come to speak of the treaty more at large, it gave them.

But let us examine the gentlemen's proposition, as to the competency of the United States, and the states, to make compacts. It is true only in a very qualified sense, as I will now attempt to shew you. The constitution authorises Congress to procure by cession a seat of government, and by purchase, scites for forts, arsenals &c. from the several states; it authorises the states, by consent of Congress, to make compacts with each other, and with foreign powers; probably the power to admit new states, connected with the prohibition to form them out of the territory of others, without the consent of Congress and the states concerned, will justify the cession of territory by the states, for the sole purpose, however, of forming Republican states. Now, sir, quo ad the particular subjects which I have mentioned, the constitution imparts to

the United States, and to the states, as the case may be, a competency to contract ; if gentlemen mean to extend that competency one iota beyond these subjects, then I utterly deny their principle. We have been referred to many compacts, which have been made by Congress and the several states; without yielding to the force of precedents, if not justified by the constitution, but protesting against them, I think I can venture to say that most if not all the compacts referred to, will be found to be of the description which I have mentioned, But we have been referred to some of the stipulations of those compacts, particularly between Virginia and Kentucky, and have been asked, whence was the power derived to make them ? It has already been shewn, that the constitution gives them the power, with the assent of Congress, to make compacts, subject of course to the limitation, that they do not violate that instrument. As to the stipulations themselves, it will be found, that almost all of them, are mere declarations of what would otherwise have existed, by virtue of the constitution; for example, Kentucky shall bear her equal part of the public debt; the navigation of the Ohio shall be common between the citizens of the two states ; non-residents' lands, being citizens of Virginia, shall not be taxed higher than residents ; the first provision is the inevitable consequence of Kentucky becoming a member of the Union, whereupon she was liable to her proportion of taxation ; the second and third are both emphatically embraced by the provision, that the citizens of each state, shall enjoy all the privileges and immunities of citizens of the several states. The same remarks apply to almost all the stipulations, in the compacts between Congress and the states ; if an exception can be found, I have only to say that we cannot justify one violation of the constitution by another. The question here, however, is of an entirely different kind ; it is not a question about the cession of territory, between Congress and a state, nor about a compact between two states, containing provisions to secure a community of rights and privileges between their citizens, which the constitution itself secured ; but it is, whether Congress can by a compact with a state, obtain from that state a surrender of any portion of its sovereignty ? Let us put a case, and one in relation to an old state, for I think I may now assume, that the old and new stand on the same ground. Would Virginia, then, be bound by a contract made with Congress, by which she should stipulate to establish a particular course of descents, or a particular code of criminal jurisprudence ? No sir, the Member from Pennsylvania (Mr. Sergeant) after quoting so many compacts, which did not apply, acknowledged that if the

one now proposed, would in any degree impair the Sovereignty of Missouri, it could not be sustained. Now, sir, it seems to me, that it is only necessary to define what sovereignty is, with the aid of this concession, to shew that the amendment must be abandoned. A state, to be sovereign and independent, must govern itself by its own authority and laws, without the interference of any foreign power.

I ask, then, if this amendment prevail, will Missouri govern herself by her own authority and laws, in relation to the subject of slavery? On the contrary, do we not by the amendment say to her, that she shall in the first instance submit to our will, contrary to her own, and that not by an act of ordinary legislation, but by one, which we require to be made irrevocable without our consent? If it be said, that ours is not a foreign interference, I answer in the language which I have formerly used, that, as to any subject over which, a power is not given to the general government, and I trust I have proven this is one of that kind; that government is a foreign one to the states, as much as any government in Europe. But it is asked whether it is essential to sovereignty, that a state should have slavery in its bosom? I answer no sir; but it is of the very essence of sovereignty, that a state should have the power of deciding for itself, whether it will, or will not, tolerate slavery. Gentlemen pressed by this reasoning, retreat to another ground; they say that slavery is a moral wrong, and as such cannot be the subject of sovereignty; I answer that it is essential to sovereignty, and the highest act of its exercise, to decide what is embraced within its limits, and that the very act of one government, attempting to decide this question for another, is a glaring violation of the sovereignty of that other; I answer further that sovereignty in relation to the internal concerns of a state, has no limits but the discretion and moral sense of the state itself, unless it relate to a subject, the power over which has been specially delegated, and it has been the purpose of my whole argument to prove, that this has not been so delegated. Suppose that a state, like ancient Sparta, should by its laws even sanction the barbarous practice of putting their Helotes to death; suppose that it was so lost to the moral sense, as to permit the most enormous crimes against the laws of morality, or religion, to escape with impunity. Have we the power to interfere in these matters of municipal legislation, unless it be in relation to a subject over which the constitution gives us power? I must be pardoned for repeating, that we have no more than one of the governments of Europe.

But in whatever light we look upon the subject of sla-

very, whether as a moral wrong or not, whether as a rightful subject matter of sovereign power, or not, we know that it existed in many of the old states, at the formation of the constitution; that it has continued to exist; that there are several clauses in the constitution, which have direct reference to it, giving protection to the master in reclaiming the services of his slave, and conferring political power, and creating a liability to taxation, with an acknowledged view, to this kind of population; this is admitted by all to be the case, as it respects the *old* states; I have shewn again, and again, that the new states and their citizens have all the rights, privileges, immunities, and powers of the old states. If then it be a right, or if you please a wrong, in the old states, and their citizens, to hold slaves beyond our control, then the new states and their citizens claim the same right, or the same wrong, call it by what name you please.

It has been said by the two gentlemen from Pennsylvania, (Mr. Hemphill and Mr. Sergeant,) that the states had the right to admit new states upon conditions to be prescribed by themselves; and it has been asked, what has become of that power? If they have given to Congress the simple power of admission, is the other part of the power annihilated, or does it yet remain with the states? To these questions I answer, without difficulty, that the states did possess the power of admitting upon condition; that this part of their power is neither annihilated, nor does it remain with them; that they have given to Congress the power to admit; and that they have declared the terms and conditions of that admission, in the various provisions of the constitution.

Sir, the conclusion of the whole matter is this: The states which were the original parties to the constitution, have given to Congress, the power of extending indefinitely the territory, over which their dominion is to be exercised, by the admission of new states; but they have not given to Congress, the right to increase their capital stock of power, either by taking, by their own will, or by the joint will of themselves, and any state or states, any attribute of their sovereignty; the first would be an injury to the individual state, from which it was taken, the second would be an injury to all the states, which compose the confederacy. No, sir, the sum of the power of Congress is fixed by the terms of the constitution, in a manner irrevocable, except in the mode prescribed for amendment; the states have not entrusted to any body of men on earth, a power which might enable them to disturb the political balance, which is adjusted with so much care in the constitution; they have not left it to Congress, to make the new states either greater or

smaller than themselves, but have made their own political dimensions, as marked out in the constitution, the precise standard for the formation of those states, which should come into their family by adoption.

I come now to speak of the influence of the treaty of 1803 upon this question. The third article provides, "that the inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." An attempt has been made to assail the validity of this article, upon the ground, that it was an interference, on the part of the treaty-making department of our government, with the power of Congress, to whom authority is given by the constitution to admit new states. A little examination of this objection will shew, that it cannot be sustained: the treaty-making power, in the exercise of their constitutional functions, contracted to purchase of a foreign state the territory, the rights of a part of which are now in question. They stipulated, in the article which has just been quoted, that they should be incorporated in the Union, and admitted, as soon as possible, to a participation in all the rights, advantages, and immunities, of citizens of the United States. Here, then, is a contract, by the power in our government competent to make it, for the acquisition of people and territory, upon conditions, not in violation of our constitution, but in direct accordance with it. It is true, sir, that, according to the distribution of power amongst the respective departments of our government, the stipulations in favor of the ceded country, are to be actually performed by Congress; in like manner, the money to be paid, as the consideration of the cession, must be appropriated by Congress; yet between us and foreign powers, there is no organ by which a contract can be made, whatever may be the subject matter of it, but that department, which is authorized to make treaties. If the treaty, when made, relate to a subject which, by the constitution, falls within the jurisdiction of Congress, it results, from the nature of our government and the distribution of its powers, that Congress cannot, without their own assent, by the mere operation of the treaty, be bound to execute its provisions. But when that assent is given, more especially when, as in this case it is shewn, by the acceptance and actual disposition of the subject matter acquired, then a refusal to comply with the conditions of the ac-

quisition would be in violation, not only of the moral duty imposed by the constitution, but also of the plighted faith of the nation. What are the facts in the present case? Congress have taken possession of the territory purchased; they have paid almost the whole consideration; they have derived large sums of money from the actual sale of the land, and, by repeated acts of legislation, have in various ways exercised authority over the people and soil. We are, then, as much bound by our own assent, in this case, as a private man, whose agent has purchased an estate for him, subject to mortgage, would be to discharge that mortgage, if, with a knowledge of the incumbrance, he took possession of the estate, and, either by cultivation or sale, received the benefit of the purchase.

Assuming it, then, to be proven, that we are under the double obligation, first, of moral duty, and, secondly, of plighted faith, to admit Missouri into the Union, and to extend to her citizens all the rights, advantages, and immunities, of citizens of the United States, the next question which presents itself is this—What are those rights, advantages, and immunities? And here, sir, I beg leave to refer to the various provisions of the constitution, which I have already examined, as shewing what they are; claiming for the state and citizens of Missouri the same powers and rights precisely, as by the constitution are recognized as belonging to the original states, either by grant, or reservation, and, amongst others, the power in the state by its own will, to regulate its own internal concerns, and to decide for itself, whether it will tolerate slavery; and, if it should so will, the right in its citizens to the slaves which they now hold, to their future progeny, and to acquire and carry into that state other slaves from any portion of the United States.

The gentleman from Pennsylvania (Mr. Sergeant) objected, that the terms of the treaty embraced only the inhabitants residing there at its date. What then, sir, is the condition of the children of those inhabitants, and what has it been for the 17 years which have elapsed since that period? Will the gentleman say, that the provisions of the treaty do not extend to them? As well might it be said, that those who are born in a country after the formation of its constitution, are not entitled to share in its benefits. What, too, sir, let me ask, is the condition of citizens of the United States, who have removed to that country, having purchased lands from us? They are entitled to claim the benefit, in my opinion, of the treaty and constitution both; but, beyond all doubt, the moment the state of Missouri is admitted into the Union, the constitution, by the provision which I have so

often quoted, secures to them an equality, a community of privileges and immunities, with their fellow citizens throughout the United States; and gives to the state, as such, equal rights and powers with the other states of the Union, the extent of which I have already shewn.

The next clause from which the right to impose this restriction is derived, is that which gives us power to make all needful rules and regulations, respecting the territory of the United States. I do not propose to go into the general question, how far our power extends over the territories, as such: that question will hereafter be distinctly presented to our consideration. Deferring, therefore, the general enquiry till that occasion, I beg leave to remind the committee that, as it respects the new territory of Missouri, we have, by one of our own regulations, given it a legislative body; that we have extended to that body the whole power of legislation, subject only to the limitation that their laws shall not be inconsistent with the constitution and laws of the United States; a limitation to which every state in the Union is equally subject; the question of slavery is one of a legislative character: it, therefore, already belongs to them to decide it by our own grant. Let me ask gentlemen, can a grant of political power be revoked at the will of those who grant it? Would it not excite some surprise in this hall, to talk of revoking a common charter of incorporation, such as that of the Bank of the United States, unless for some cause of forfeiture of that charter? I do not mean now to say, what the extent of legislative power is, in relation to that subject; some modern writers of merit seem to countenance the idea, that there are strong cases, in which it would be a legitimate exercise of power: but of this I am sure—that this house would not undertake to revoke the most common charter which they had granted, unless for some act of forfeiture; and yet it seems to be thought by many an act quite of ordinary legislation, to revoke the most exalted charter which can be created—that of the grant of legislative power. If you can take from a territory a power of this kind, when once granted, what would hinder you from repealing the very act, by which you would admit the same territory into the Union? They are both grants of political power, differing only in degree. But, sir, let this question be as it may concerning the territories, all further enquiry into which I shall defer till that subject comes up, it has no application to the present case, which is the admission of a state. Whatever is our power over the territories, it is acknowledged that it co-exists with the territorial condition, and that when that ceases the power over them, as such, ceases also. It is acknowledg-

edged, that we could not impose this condition after the state is admitted; and yet it is contended, that it may be done just before its admission, by virtue of a territorial power, which must necessarily cease to exist, at the moment when the admission takes place: in a word, it is argued that, by virtue of a power confessedly temporary, we can impose a condition, in its character perpetual, if we so will. I cannot shew the glaring impropriety of this position in so palpable a mode, as by likening it to a case of municipal law. Let us put the case of guardian and ward. A guardian has power to make leases of his ward's land, during his minority, and to expire with it; the moment after his ward reaches majority, he has no power over the estate; and yet, sir, upon the principle now contended for, he might enter into a contract the day before the minority ceased, which would bind the ward and his heirs forever. If such a proposition as this, were stated in the judicial hall, in another part of this Capitol, the gentleman would be told, that it could not even be received for discussion.

The next clause in the constitution, from which the power to impose this restriction is attempted to be derived, is that by which it is declared that "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited prior to the year 1808." Under this it is contended, that slaves may be prevented from passing from one state to another. It has already been properly said, that if that were the correct construction, it ought, being a legislative power, to be executed by an act of Congress, having equal effect upon all the states, and not by an irrevocable compact, operating on one only. But, sir, independently of this objection, there are two other answers to the argument attempted to be derived from this clause, which I consider conclusive. The first is, that the word *migration* applies to *freemen*, not *slaves*. The origin and received acceptation of the term prove this. I think I can shew it, too, by reference to the probable object of the clause, and the conflicting interests of different sections of the country which it attempted to reconcile.

Let it be recollected, that the constitution entitled the slave holding states to a representation founded, in a certain proportion, upon their slave population. Now, sir, I think it fair to conclude, as it was agreed that Congress should not have the power to prohibit the importation of slaves prior to 1808, by which importation the representation of the slave holding states would be increased, that the jealousy of the non slave holding states required as an offset to this, that the migration of free persons, by

which their representation would be increased, should not be prohibited till the same period. But, sir, there is an answer, arising from the phraseology of the clause, which seems to me to put an end to the question ; the words are : " The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited." Now this word "*admit*," proves uncontestedly that the word migration, whether it relates to free persons or slaves, looks to persons coming from abroad ; for, if they were already in the states, they could not be admitted. Sir, it would be a solecism in language, to talk of admitting a man into a house, who was already in it.

The last source from which gentlemen have sought the power of imposing this restriction, is the clause which authorises Congress " to regulate commerce amongst the several states." Sir, you have already been properly told, that this clause meant only to enable Congress, by uniform and equal regulations, to prevent one state from imposing injurious duties upon the commerce of others, passing through its jurisdiction. This is proven, first, by the exposition given of that power by the Federalist, where the principle just mentioned is stated as the reason which led to its adoption. I will add, that a striking exemplification of the principle will be found in the relative situation of the states of New York, Connecticut, and New Jersey ; it is proven, also, by those provisions of the constitution which forbid Congress from giving, by any regulation of commerce, a preference to the ports of one state, over those of another, and declaring, that vessels bound to or from one state, shall not be obliged to enter, clear, or pay duties in another.

You have been properly told, also, in relation to this clause, as to that concerning migration, that if it touch the case at all, it is a legislative power, and must, in its operation, affect all the states alike. To shew to the committee the glaring impropriety of this amendment, as resting for its support upon this clause, permit me for a moment to present to you the shape of a bill, having an appropriate title, and followed by the enactments which gentlemen propose. As I have shewn to you, that the new states have all the rights of the old, indulge me so far as to substitute Maryland for Missouri. The appropriate title, then, as derived from the language of the constitution, would be, " An act to regulate commerce in slaves amongst the several states." Now, sir, for the enactment, just such in substance as gentlemen propose : " Be it enacted by the Senate, &c. that hereafter no slave shall migrate from any part of the United States, into

Maryland ; that the children who shall be hereafter born, of all the slaves now in that state, shall be free ; and that Maryland shall provide for this, by an act, irrevocable without the consent of Congress." Such a bill would indeed be like the painting of Horace, with a human head, but in another part, resembling the fish. I should like to see such an act, with such a title, published in the Intelligencer. *Risum teneatis amici?* Would not Maryland naturally enquire, why single this state out, and put it under your prohibition ? Sir, if you mean to regulate commerce, then it must be amongst the several states; but according to this law, a slave may migrate to Virginia, but he cannot migrate to Maryland ; it is liable, then, to the strong objection, that it is unequal and partial in its operation. But, sir, Maryland would press you with other objections of an unanswerable kind ; she would tell you, that commerce *ex vi termini*, implies buying and selling, an exchange of equivalents ; but your law will embrace many cases, where there is no buying and selling ; no exchange of equivalents, and consequently, no commerce to regulate. She would instance the case of slaves being derived to a citizen of Maryland, by intestacy, by devise, or by marriage. She would state the case of a citizen of another state, removing to Maryland, and carrying his own slaves with him ; in not one of these cases is there the slightest pretence of commerce, and yet your law would embrace them all. She would tell you, too, that if she were to pass any act at all, she must consult her own will, her own views of expediency ; and that what she enacted, she claimed the power to repeal, without consulting Congress.

But, sir, the strongest objection lies yet behind. The law which I have supposed, upon the model of this amendment, emancipates the children of all the slaves now in Maryland. Is this too, a regulation of commerce ? It is a contradiction in terms, to give it such a name. This last part of the bill, sir, is the most alarming in its consequences, for it goes directly to the emancipation of slavery throughout the whole United States, after the present generation shall become extinct ; that is, in the life of one man—for, whilst the candles are all burning, tho' millions may be embraced, yet the life of the longest liver terminates the period. And have you the power to emancipate the children of acknowledged slaves ? Yes, says one gentleman from Pennsylvania, (Mr. Hemphill;) for he asked, can a man have a vested interest in an unborn human being ? and he answered, *no*. If this be the doctrine, sir, though that gentleman did not apply it, and I believe did not intend to apply it, to the old states, I

repeat again, that it proclaims universal emancipation, after failure of the present generation of slaves. Sir, it is of no importance, that the present Congress do not apply it : we are but actors, who fret our busy hour upon the stage, and then pass away ; others will come to act their parts, and these principles may then be put into practical execution, in their utmost extent. I will not detain the committee to prove, that a property in the parent implies property in the progeny. The maxim "*Partus sequitur ventrem*" is as old as the civil law ; it is founded upon the immutable principle, that wherever I have property in the capital stock, I have the same property in its products. He who owns the land, owns all the fruit which it produces. If, then, you admit my property in the parent, you cannot deny it in the child. If, indeed, you deny my right to a vested interest in an unborn human being, you may perhaps go one step further, and deny the same interest in those who now exist. The argument is as strong in one case as the other. Assume but this principle, and then you need not wait for futurity, to do this great work of emancipation. No, sir, you may say at once to every bondman in the United States, you are free.

I have now sir, finished my view of this question. I believe upon my conscience, that the proposed restriction, is a violation of the constitution ; I trust I have proven it; if I have, or if there be even serious doubt, I conjure the committee to pause, before they take the step proposed ; sir, it was long a desideratum in politics, to devise a government like ours, which should, by the union of many sovereign states, each retaining its sovereignty for municipal purposes, combine the strength of a monarchy, with the freedom of republic. With us, it is "in the full tide of successful experiment." Let us not take any course calculated to arrest its success ; such I fear will be the unhappy tendency, of the present measure. Let it not be supposed that I come here, the apostle of disunion ; no sir, I look upon the Union of those states, as the ark of our political safety; if that be lost, we may bid farewell, a long farewell, to all our pleasing hopes and fond anticipations of future greatness, and glory. They will be as the illusions of a deceitful dream. But, whilst I deprecate dis union as the most tremendous evil, I cannot shut my eyes, against the light of experience ; I cannot turn a deaf ear, to the warning voice of history ; from these we learn, that *Harmony*, is the spirit which can alone animate and sustain a confederate republic. Whilst this spirit exists, it is displayed in acts of legislation, reciprocally beneficent to every member of the confederacy, and these become new ligaments, to bind them to-

gether in the bonds of brotherhood ; this spirit is not at once extinguished, nor are the bonds of union, suddenly burst asunder: but when instead of this beneficent spirit of legislation, which I have described, a different course prevails, this spirit of Harmony gives way successively to jealousy, distrust, and, finally, discord ; let but this last, spring up amongst us, you may consider the days of the republic as numbered, and that it is fast hastening to its dissolution.

When that sad catastrophe shall befall us, this noble confederacy, which, in its undivided state, could stand against a world in arms, will be broken, if not into its constituent parts, into some minor confederacies, the victims of foreign intrigue and of their own border hatred. Where then will be your commerce, which covers every sea ? where your army and navy, the means of your defence, the instruments of your glory ? They will be remembered only, to make the contrast with your then situation more painful. What will become, then, of this boundless tract of western land, the subject of the present contest, which has poured, and would continue to pour, such rich streams of wealth into your treasury ? It may become the theatre on which the title to itself may be decided, not by congressional debate, not by construction of treaties or constitutions, but by that force which always begins where constitutions end. I conjure you then, beware, lest, by this measure, you excite the discontent of one half of the Union, by legislating injuriously to them, upon a subject in which they have so deep a stake of interest, and you have none, in point of property ; take care that you do not awaken the painful reflection, that the federal arm is strong only to destroy. I hope and trust that the wisdom of our councils may be such, as to avert these evils ; but he knows little of the human character, who does not fear that consequences like these may follow, if the hand from which the greatest good is looked for, be the one which deals out the deepest injury.

God grant that, in deciding this question, we may bear in mind this excellent motto, "united we stand, divided we fall."



WERT BOOKBINDING

JAN 1989

Grantville, PA

